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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

Number 216

PATRICK G. MARTONE,

Appellant,

VERSUS

CECYL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, and JOHN JULIEN McKEITHEN,

Appellees.

Appeal from the Supreme Court of the State of Louisiana

APPLICATION FOR REHEARING

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Appeal from the Supreme Court of the State of Louisiana

APPLICATION FOR REHEARING

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

PATRICK G. MARTONE, plaintiff in the captioned matter, respectfully petitions the court to grant a rehearing as to the Per Curiam decision of the court of October 14, 1968, whereby petitioner's appeal from the

decision of the Louisiana Supreme Court was dismissed for want of a substantial federal question, Mr. Justice Black dissenting.

Respectfully petitioner asserts that the Per Curiam decision should be recalled, jurisdiction should be noted and a full hearing before the court should be granted for the reason, that not only does the appeal present substantial federal questions as to the constitutionality of the state statute in controversy, but events occurring since the inception of this lawsuit in relation to the administration of said state statute give rise to profound questions of constitutional law and make imperative judicial relief, if the constitutional liberties of petitioner and those similarly situated are to survive. These events exemplify:

(a) A willful, concerted, and unbelievably abrasive course of conduct by state officials, spearheaded by the Governor of the State of Louisiana, directed against petitioner and every member of Teamsters Local Union No. 5 of Baton Rouge, Louisiana, designed to destroy said labor union and imprison every member without reasonable regard to guilt or innocence.

(b) An intimidation of state officials, including state judges, charged with carrying out the criminal prosecutions of petitioner and members of said labor union, with the result that said union members charged with criminal law violation daily are being denied the rudiments of constitutional due process, including instances of (1) collusion between state judge and prosecution attorney, (2) denial of compulsory process, (3) denial of any hearing on preliminary matters and on the merits, (4) denial of the right to make up formal bills of excep-

tions necessary for an effective appeal as to trial court rulings, and (5) denial of the right to prepare a defense by the action of state officials intimidating and instructing witnesses into silence vis-a-vis efforts of the counsel for the accuseds to interview said witnesses in preparation for trial.

On January 17, 1968, an unfortunate event occurred. Violence erupted in Iberville Parish, Louisiana, during peaceful picketing activities on a job site. Despite the fact that local officials investigating the incident obtained statements from non-striking labor members to the effect that the non-strikers had opened and initiated gun fire against the striking union members engaged in peaceful picketing, the Governor of the State of Louisiana, defendant in this cause, used the occasion of this unfortunate event to unleash the entire power of the State of Louisiana against members of Teamsters Local Union No. 5, who theretofore had been the prime target of the investigating activities of the Labor-Management Commission of Inquiry, the agency created by the state law whose constitutionality is challenged by petitioner herein.

Contrary to the purport of the statements collected by local officials as herein aforesaid, on January 19, 1968, at a press conference Governor McKeithen blamed members of Teamsters Local Union No. 5 for the violence. He then publicly characterized these union members as "hoodlums" and "gangsters". He directed all of the investigative agents of the Labor-Management Commission of Inquiry to the task of bringing about the prosecution of these union members. Contrary to state law, *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1, he directed the Attorney General of the State of Louisiana to take

over the prosecution of these union members. He also directed the Superintendent of State Police to aid in this prosecutive pursuit. He threatened to address out of office any local official whom he did not feel was carrying out his duty in the prosecution of these union members.

In short order multiple charges arising out of the single transaction mentioned were filed exclusively against members of the labor union, leaving the non-union aggressors free and clean, and excessive bail bond was required. (See Appendix A-1)

Illustrative of the abrasive state actions resulting in the denial of the constitutional rights of the victimized union members are the following examples:

EXAMPLE I

On February 15, 1968, four bills of information charging the crime of criminal conspiracy to commit a battery with a dangerous weapon were filed against one Roderick Jenkins (Plaintiff-Appellant before this court in docket number 548), despite the fact that he was in no way involved in such a criminal transaction nor was he anywhere near the scene of the alleged crime. After his arrest he applied for a preliminary examination or in the alternative for a speedy trial. (See Appendix B-1) When the state trial judge refused to take any action on his application, a petition for mandamus was filed with the Louisiana Supreme Court. (See Appendix B-2) This application was summarily denied. (See Appendix B-3) After denial of his petition the state judge denied his application for a preliminary examination and a speedy trial, stating as to the latter that Jenkins' trial was due

to be conducted during the month of April, 1968. (See Appendix B-4)

State officials failed and refused to try Mr. Jenkins' case as indicated by the state judge in his denial of Mr. Jenkins' application for a speedy trial. Mr. Jenkins' case was set for trial for October 7, 1968. On September 30, 1968, however, the Attorney General moved to set aside Jenkins' trial, assigning no cause whatever. Mr. Jenkins vigorously opposed the motion but the Attorney General prevailed, the state judge granted the motion and the trial of Mr. Jenkins' case was set aside without date. He continues to be unable to obtain a speedy trial and has thus far been unsuccessful in obtaining judicial relief from the state court to compel state officials to recognize and accord to him his constitutional right to a speedy trial.

EXAMPLE II

Despite the mandatory provision of state law, Louisiana Code of Criminal Procedure, Article 321, a bail bond may be increased only for good cause. On September 3, 1968, on a showing of no cause whatever State Judge Daniel Kimball more than doubled and tripled existing bonds as to thirteen union members accused of crime. (See Appendix C-1)

Thereafter one of the defendants, Jerry Sylvester, filed a formal application to reinstate the original bail or in the alternative to reduce the increased bail . (See Appendix C-2) This motion was fixed for hearing for September 23, 1968. A written request dated September 19, 1968, for the issuance of subpoenas for the appearance of witnesses on behalf of Mr. Sylvester was hand-delivered to the Clerk of the state court. State Judge Kimball,

however, extrajudicially, and without Mr. Sylvester's knowledge, instructed the state Clerk of Court not to issue the subpoenas for the appearance of Mr. Sylvester's witnesses to testify on his behalf in connection with his motion to reduce the bail bond. Said state judge admitted that compulsory process was denied because of his instruction and also refused to conduct any hearing as to Mr. Sylvester's application.

EXAMPLE III

Seventeen separate charges of public bribery were filed against Stanley H. Jackson. In connection with preliminary hearings State Judge Kimball overruled Mr. Jackson's objection to the participation of the Attorney General of Louisiana as prosecuting attorney in violation of state law. *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1. This objection was overruled. Mr. Jackson thereupon requested leave of court to establish the factual basis of his bill of exception reserved to the ruling of the court pursuant to state law (Louisiana Code of Criminal Procedure, Articles 843 and 844). Said state judge refused Mr. Jackson's request. Because of the peculiar provision of state law appellate courts will consider only formal bills of exceptions reserved during proceedings in the lower court, and these bills must contain the facts upon which the objection is based; otherwise, these objections will not be considered and reviewed on appeal. Thus the ruling of the state judge effectively denied Mr. Jackson of any review on appeal. An application to the Louisiana Supreme Court for certiorari and mandamus was filed. (See Appendix D-1) Despite the fact that the conduct of said state judge shut off any right of appellate review as to the rulings complained of, Mr. Jackson's

application was denied by the Louisiana Supreme Court. (Appendix D-2)

Furthermore, despite the provisions of state law granting to all persons accused of crime the right to have bills of exceptions and the facts upon which objections are based transcribed at the expense of the state, Mr. Jackson was denied of this right as shown by the content of his application aforesaid.

State Judge Kimball continued to deny Mr. Jackson of the rudiments of perfecting formal bills of exceptions and of eliciting and establishing the facts upon which his objections were predicated. Subsequent application for remedial writs from the Louisiana Supreme Court, the court of last resort, similarly was denied. (Appendix D-3)

EXAMPLE IV

Acting in collusion with the Louisiana Attorney General and his assistants, State Judge Kimball on September 30, 1968, ordered a change of venue of the criminal prosecutions against Mr. Jackson without any hearing contrary to state law. All efforts at obtaining a hearing in respect to the charge of collusion just mentioned, and to the continuing refusal of state officials to supply Mr. Jackson with a transcript of the facts upon which his bills of exceptions and objections rest have been denied. The consequence of this course of conduct is to remit Mr. Jackson to a trial before a judicial forum not legally competent to conduct the hearing and to the corollary financial burden of sustaining such a trial and to the burden of the agonizing ignominy of a public trial. Application to the Louisiana Supreme Court for remedial writs as to Mr. Jackson's inability to obtain a hearing

concerning his complaints was summarily denied. (See Appendix D-4)

EXAMPLE V

Members of the Attorney General's Office have instructed witnesses purportedly having material information concerning the criminal prosecution of Mr. Jackson not to speak to Mr. Jackson's counsel in connection with Mr. Jackson's effort to prepare his defense to the seventeen charges of public bribery. In so doing they are engaging in pretrial suppression of evidence and consequently denying Mr. Jackson of the opportunity to fully and fairly defend himself to the criminal charges filed against him. They have also attempted to obtain evidence against Mr. Jackson by threatening with criminal prosecution persons whom they believe may possess information incriminatory of Mr. Jackson. Furthermore, resort to federal court to secure and vindicate his constitutional rights has been without avail. A detailed recital of these transactions is contained in the document annexed hereto under Appendix E-1.

EXAMPLE VI

The matter of *Jenkins v. John Julien McKeithen, et al.,* lodged in this court under docket number 548, defendant McKeithen, Governor of Louisiana, is charged with a conspiracy to deny Mr. Jenkins and members of Teamsters Local Union No. 5 of their civil rights secured by the Constitution of the United States, arising out of the course of conduct by state officials as heretofore enumerated and otherwise. On January 26, 1968, in a public statement as to the conspiracy charge involving defendant McKeithen and members of the Labor-Management

Commission of Inquiry of Louisiana, McKeithen threatened:

> "Any testimony under oath that there is any connection on my part, on Dean Hebert's part or Dean Morgan's part, of any conspiracy with anyone, other than those who are guilty of bombing, aggravated battery, extortion and so forth, they immediately will be charged with perjury and we shall have some more go to the penitentiary."

On May 2, 1968, one George Wyatt, a former undercover agent of the Louisiana Commission of Inquiry, executed an affidavit to be filed and used in support of an application for injunctive relief in the case of *Jenkins v. John Julien McKeithen, et al.*, while it was pending before the United States District Court, Eastern District of Louisiana, Baton Rouge Division, which affidavit supports the charge of conspiracy alleged in said lawsuit, including the statement that investigators of this state agency were given the right to kill certain members of said labor union so long as it was made to appear to be an act of self-defense. (Copy of affidavit appears as Appendix F-1)

On July 30, 1968, in fulfillment of McKeithen's threat to prosecute for perjury any witness who might give any statement under oath in support of the conspiracy charged, one Joseph A. Oster, an investigator for the Labor-Management Commission of Inquiry of Louisiana, filed an affidavit before Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court of Louisiana, charging the said George Wyatt with the crime of perjury for having filed his aforesaid affidavit before the United States District Court; based upon such affidavit a warrant for his arrest was issued, bringing about his

arrest, and he was released on posting a Fifteen Thousand ($15,000.00) Dollar bail bond. (Copy of affidavit appears as Appendix F-2)

On October 9, 1968, a formal bill of information was filed against the said George Wyatt by Mr. Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana, charging said Wyatt with perjury in violation of Louisiana Revised Statute, Title 14, Section 123, based upon the sworn statement which Wyatt gave in support of the conspiracy charge against Governor McKeithen. (Copy of Bill of Information appears as Appendix F-3)

Said criminal charge of perjury was filed by state officials, functioning as agents for the Labor-Management Commission of Inquiry of Louisiana, solely for the purpose of depriving Mr. Jenkins of his constitutional right to produce proof in support of his legitimate claim and to obstruct the due course of justice. This purpose is made manifest by the unambiguous decision of this court in *Thomas v. Loney*, 134 U.S. 372, 10 S.Ct. 584, which makes it clear that deponent Wyatt is accountable exclusively to the United States government, and if indeed his sworn statement is false, it does not constitute a crime cognizable by the laws of the State of Louisiana.

The state statute in controversy creates not an innocuous investigative agency of the State of Louisiana. As the state trial judge who considered the state statute unconstitutional observed in his opinion:

> "What we have here is more than an agency whose sole purpose of existence 'is to find facts which may subsequently be used as the basis for legislative or executive action' *(Hannah)*, more than an inquiry 'to pursue a legislative policy of fire

prevention through the discovery of the origins of fire [rather than adjudicate individual responsibility for the fire]' (*Re Gorban,* 352 U.S. 330, 1 L.Ed. 376, 77 S.Ct. 510), and more than a general inquiry into powers before it 'not as potential accused but solely as witnesses' (*Anonymous Nos. 6 & 7 v. Baker,* 360 U.S. 287, 3 L.Ed 2d 1234, 79 S.Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights (*Morgan v. U.S.,* 304 U.S. 1, 82 L.Ed. 1129, 58 S.Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 95 L.Ed. 817, 71 S.Ct. 624; and *Greene v. McElroy,* 360 U.S. 474, 3 L.Ed.2d 1377, 79 S.Ct. 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah,* 4 L.Ed.2d 1307, 1353.)"

Furthermore, as exemplied by this application and the annexed documents, state officials are willfully administering the provisions of said act in furtherance of a discriminatory pattern of criminal prosecution designed to throttle and destroy the rights and opportunities of a group of union laborers singled out for special treatment. These wrongful acts performed by these state officials, charged with the responsibility of enforcing the state statute in controversy, are but an extension of the wrongful state actions alleged in Paragraphs 17-19 of petitioner's supplemental petition before this court. (See Appendix B-46-47 of his Statement as to Jurisdiction)

These wrongful acts illustrate what is made possible by the state statute in controversy, and conclusively establish that the fact-finding procedure of said state law

is but a part of a criminal process leading to purposeful convictions.

While ordinarily a person convicted of crime has a remedy by appeal, this is not always the case in Louisiana. In most cases appeal remedies are nominal only in that where one is sentenced to imprisonment for five (5) years or more, he is not able to be released on bail during his appeal. Louisiana Code of Criminal Procedure, Article 314. Thus, however innocent, where an erroneous conviction obtains, the accused must serve time in prison, pending an appeal to effect a reversal.

Considered in the light of these developments, which exemplify a discriminatory pattern of criminal prosecution against a group singled out for special treatment and which disclose that hearings before the state agency created by the statute in controversy serve as part of the process of criminal prosecution, it is evident that this state law is unconstitutional, both by virtue of the terms it employs and by virtue of the manner in which these terms are being administered against petitioner and the other union members.

For these reasons petitioner respectfully urges the court to recall its Per Curiam decision, to note jurisdiction and to grant to petitioner a full hearing on his

appeal to the end of adjudicating the substantial federal questions presented.

Respectfully submitted,

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/s/ J. MINOS SIMON

Attorney for Appellant

APPENDIX A-1

The following is a list of the individuals who were charged and the aggregate of the bail bond exacted from each.

Name	*Bail Bond*
Jerry Sylvester	$10,000.00
Terry George	$10,000.00
Jerry Kinchen	$10,000.00
Edgar Coleman	$10,000.00
Tommy Craig	$10,000.00
Alton Holden	$ 8,000.00
Hugh Marionneaux	$ 8,000.00
Emery C. Hendrick	$ 8,000.00
Lloyd W. Kinchen	$ 8,000.00
Emmett Tucker	$ 8,000.00
Gene C. Fontenot	$ 8,000.00
Billy Dardeau	$ 8,000.00
Byron D. Vidrine	$ 8,000.00
Roderick Jenkins	$ 8,000.00
Daniel Coriel	$ 8,000.00

APPENDIX B-1

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBERS 9840, 9841, 9842, 9843

IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

PETITION FOR A PRELIMINARY EXAMINATION OR ALTERNATIVELY FOR A SPEEDY HEARING

The petition of Roderick Jenkins, resident of East Baton Rouge Parish, Louisiana, respectfully represents that:

1.

On February 15, 1968, Honorable Sam Cashio, District Attorney, filed a Bill of Information against your petitioner, assigned as Docket Number 9840, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on W. O. Bergeron; a Bill of Information, assigned as Docket Number 9841, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Warren Shores; a Bill of Information, assigned as Docket Number 9842, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Alfred Bergeron; a Bill of Information, assigned as Docket Number 9843, whereby your petitioner is charged with

a criminal conspiracy to commit a battery with a dangerous weapon on one Cornelius Green; said criminal offense is alleged to have been committed in Iberville Parish, Louisiana, on January 17, 1968.

2.

Your petitioner alleges that said criminal charges are scandalously and willfully false and without factual support whatsoever; petitioner further alleges that according to his information the filing of said criminal charges against him is but the product of a conspiracy among state officials, including John Julien McKeithen, Governor of the State of Louisiana, willfully and deliberately to falsely prosecute your petitioner with a view to denying and depriving your petitioner of his constitutional liberties as a means of discrediting the Teamsters Labor Union organization of Baton Rouge, Louisiana, of which your petitioner is a member, and ultimately for the purpose of discrediting and destroying the effectiveness of one Edward Grady Partin, Business Agent of said Teamsters Local Union No. 5 of Baton Rouge, Louisiana, and with a further view of generating a public climate that will encourage the enactment of punitive legislation against labor unions of Louisiana at the next regular session of the Legislature of the State of Louisiana to be convened during May, 1968.

3.

Petitioner further alleges that at no time material to the criminal activities mentioned in the Bills of Informaton was your petitioner anywhere in the Parish of Iberville, State of Louisiana; on the contrary your petitioner was engaged in the discharge of the duties of his

employment with Kaiser Engineers, a division of Henry J. Kaiser Company, with plant facilities in Baton Rouge, Louisiana; petitioner alleges that on the morning of January 17, 1968, he reported to the site of his employment at Baton Rouge, Louisiana, aforesaid, at 7:00 o'clock A.M. and there remained continuously until the termination of his employment for that day at or about 4:00 o'clock P.M.; petitioner alleges that he functioned as a warehouseman in a warehouse building located on a construction site of the Henry J. Kaiser Company property located on the Mississippi River in the City of Baton Rouge, Louisiana.

4.

Your petitioner alleges that he had nothing whatsoever to do with the alleged criminal offenses charged in the said Bills of Information; except to post his bail bond, your petitioner alleges that he has never been in Iberville Parish, Louisiana, for the year 1968 and to his recollection he has not been in Iberville Parish for the past three to four years and then his appearance therein at that time was of a transitory nature only.

5.

Petitioner alleges that the false charges aforesaid have exposed your petitioner to ridicule and public hatred; John Julien McKeithen, Governor of Louisiana, has made repeated public statements identifying those charged with criminal offenses in Iberville Parish, Louisiana, as hoodlums and gangsters comparable in character to the Mafia and notorious underworld figures; your petitioner is entitled to and desires to have an expeditious disposition made of the false charges filed against him and because of the exigencies in this particular case,

and because of the total lack of factual basis for the criminal charges filed against him, your petitioner should be granted and is entitled to a preliminary examination with a view to being discharged immediately and set free and having said criminal charges dismissed; alternatively your petitioner is entitled to a speedy hearing, and trial of said causes should be set down for hearing in the immediate future.

WHEREFORE PETITIONER PRAYS that a preliminary examination be ordered conducted on a date designated by this Honorable Court and after due hearing had pursuant to law, that the criminal charges herein aforesaid be dismissed and your petitioner be discharged and set at liberty; alternatively that a rule nisi issue herein directed to Honorable Sam Cashio, District Attorney, ordering him to show cause on a date designated by this Honorable Court why a speedy hearing should not be granted as to all of the criminal charges herein mentioned to the end that there may be an expeditious disposition of said charges and that petitioner be vindicated and set free.

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/s/ J. MINOS SIMON

Attorney for Petitioner

APPENDIX B-2

LOUISIANA SUPREME COURT
DOCKET NUMBER 49,125

STATE OF LOUISIANA, EX REL.,
RODERICK JENKINS

VERSUS

HONORABLE G. ROSS KEARNEY, JR.,
Judge, Eighteenth Judicial District

In Re: STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

Numbers 9840, 9841, 9842, 9843

APPLICATION FOR WRITS OF MANDAMUS AND PROHIBITION TO THE EIGHTEENTH JUDICIAL DISTRICT COURT, PARISH OF IBERVILLE, SATE OF LOUISIANA

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The State of Louisiana, on the relation of Roderick Jenkins, applying for writs of mandamus and prohibition or an alternative writ of mandamus and prohibition directed to Honorable G. Ross Kearney, Jr., District Judge, Eighteenth Judicial District, in and for the Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

On February 15, 1968, Honorable Sam Cashio, District Attorney, in and for said judicial district, filed a bill of information against relator, assigned as docket number 9840, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one W. O. Bergeron; a bill of information, assigned as docket number 9841, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Warren Shores; a bill of information, assigned as docket number 9842, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Alfred Bergeron; a bill of information, assigned as docket number 9843, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Cornelius Green, and said criminal offenses are alleged to have been committed in Iberville Parish, Louisiana, on January 17, 1968; in due course relator was arrested and released on bond.

On February 20, 1968, relator filed a petition for a preliminary examination or alternatively for a speedy

trial as to said charges, alleging that said criminal charges were scandalously and willfully false and without factual support whatsoever and that furthermore, according to his information, the filing of said criminal charges against him was but the product of a conspiracy among state officials, including John Julien McKeithen, Governor of the State of Louisiana, willfully and deliberately to falsely prosecute relator with a view to denying and depriving relator of his constitutional liberties as a means of discrediting the Teamsters Labor Union organization of Baton Rouge, Louisiana, of which your relator is a member, and ultimately for the purpose of discrediting and destroying the effectiveness of one Edward Grady Partin, Business Agent of said Teamsters Local Union No. 5 of Baton Rouge, Louisiana, and with a further view of generating a public climate that will encourage the enactment of punitive legislation against labor unions of Louisiana at the next regular session of the Legislature of the State of Louisiana to be convened during May, 1968.

Relator further alleged in his said application that at no time material to the criminal activities mentioned in the said bills of informaton was he anywhere in the Parish of Iberville, State of Louisiana; on the contrary he informed the court that he was engaged in the discharge of his duties of his employment with Kaiser Engineers, a Division of Henry J. Kaiser Company, with plant facilities in Baton Rouge, Louisiana; further relator alleged that on the morning of January 17, 1968, he reported to the site of his employment at Baton Rouge, Louisiana, aforesaid at 6:30 A.M. and there remained continuously until the termination of his employment for the day at or about 5:30 P.M.; that he functioned as a warehouse-

man in a warehouse building located on a construction site of the Henry J. Kaiser Company property located on the Mississippi River near the City of Baton Rouge, Louisiana. Relator further informed the said respondent judge in his petition that he had nothing whatever to do with the alleged criminal offenses charged in said bills of information and that except to post his bail bond, he had never been in Iberville Parish, Louisiana, for the year 1968 and to his recollection he had not been in Iberville Parish for the past three to four years and then his appearance therein at that time was of a transitory nature only.

Further relator informed said district judge through his said petition that the false charges against him have exposed him to ridicule and public hatred; that John Julien McKeithen, Governor of Louisiana, has made repeated public statements identifying those charged with criminal offenses in Iberville Parish, Louisiana, as hoodlums and gangsters comparable in character to the Mafia and notorious underworld figures; that the continuance of said charges against your relator unjustly and unfairly exposes relator to public hatred and ridicule and that because of his innocence he is entitled to and desires to have an expeditious disposition made of the false charges filed against him and prayed that a preliminary examination be granted so that it could be shown preliminarily that there is no basis whatever for the criminal charges filed against him and alternatively that said criminal charges be set down for a speedy hearing so that he may be restored to his liberty.

Relator alleges, however, that respondent District Judge Kearney, to whom the application has been assigned, has failed and refused to take any action what-

ever concerning your relator's application. He has failed to deny or grant the relief prayed for.

QUESTIONS OF LAW

1. Can a district court judge, by refusing to take any action whatever, deny to a citizen of the state his right to a preliminary examination, where he informs the court by formal petition that he is innocent of the charges filed against him?

2. Can a district court judge, by refusing to take any action in connection with an application therefor, deny to a citizen the right to a speedy trial of false criminal charges filed against him?

ARGUMENT

Under the provisions of Louisiana Code of Criminal Procedure, Articles 291, et seq., relator is entitled to present to the respondent judge an application for a preliminary examination and reciprocally to have said respondent judge take official action in connection therewith. It is a gross abuse of discretion for said respondent judge to refuse to take any action whatever and thus defeat relator's right to a preliminary examination.

Relator further states that under the affirmative allegations of his petition, a copy of which is annexed hereto, relator is entitled to a preliminary examination. Under the circumstances alleged by relator, no citizen of the State of Louisiana should be put to the expense and ignominy of a public trial on criminal charges where there exists no legal basis whatever for the charges. Relator informs this court that he can establish his innocence beyond any doubt whateever. The records of the

Henry J. Kaiser Company establish conclusively that he was nowhere near the site of the crime and that he can produce credible evidence from witnesses having personal knowledge thereof that he was otherwise not involved in the criminal activities charged against him. Relator can establish furthermore that the filing of the criminal charges against him resulted from intimidation of public officials by John Julien McKeithen, Governor of the State of Louisiana, threatening responsible officials with ouster from public office proceedings if they failed or refused to indiscriminately file charges against members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana. Relator's innocence can be established expeditiously by a preliminary examination. And while at this stage of the proceedings the granting or withholding of a preliminary examination rests in the discretion of respondent judge, that discretion is not unlimited, but is subject to review and control by this Honorable Court. *State v. Bertrucci,* 155 La. 108, 1, 99 So. 882. It would be an abuse of this discretion, in the light of the allegations contained in relator's petition for a preliminary examination, were said respondent judge to deny the application.

Furthermore, Louisiana Constitution, Article 1, Section 9, expressly provides that in all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury. In the alternative this is the very least to which relator is entitled. As to this there can be no dispute. Despite this undisputable fact, respondent judge refuses to take any official action in connection with your relator's said application. Such conduct instances a gross abuse of discretion. Moreover, this inaction denies to your relator constitutional due process

and equal protection secured to him by the Constitution of Louisiana and the Fourteenth Amendment to the United States Constitution.

WHEREFORE RELATOR PRAYS that writs of mandamus and prohibition be granted and accordingly respondent Judge G. Ross Kearney, Jr., be commanded forthwith to take action on relator's application for a preliminary examination and/or a speedy trial and that he be directed to grant a preliminary examination to your relator herein and prohibited from taking any steps or pursuing any course of conduct that may have the effect unduly to delay any hearing to your relator herein.

RELATOR FURTHER PRAYS for all such additional orders as the court shall see fit and proper to grant.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

VERIFICATION

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Before me, the undersigned authority, personally came and appeared J. Minos Simon, who being first duly sworn, did depose and say:

"That he is of counsel in the foregoing application for writs of mandamus and prohibition; that he has prepared and read the said application and that all of the allegations of fact contained therein are true and correct save and except those made on information and as to those affiant verily believes the same to be true and correct to the best of his knowledge, information and belief; that documents annexed to said application are true and correct reproductions of the originals thereof; that copies of this application were mailed to Honorable G. Ross Kearney, Jr., District Judge, Eighteenth Judicial District, in and for the Parish of Iberville, State of Louisiana, and to Honorable Sam Cashio, District Attorney, Eighteenth Judicial District, Parish of Iberville, State of Louisiana, on the 28th day of February, 1968.

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 28th day of February, 1968, at Lafayette, Louisiana.

Notary Public

APPENDIX B-3

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

February 29, 1968

No. 49,125

STATE OF LOUISIANA

v.

RODERICK JENKINS

In re: Roderick Jenkins applying for writs of mandamus and prohibition.

The application is denied. The showing made does not warrant the exercise of our supervisory jurisdiction.

/s/ WBH
/s/ JWS
/s/ EHMcC
/s/ MEB
/s/ JBF
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 29, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX B-4

EIGHTEENTH JUDICIAL DISTRICT COURT

NOS. 9840, 9841, 9842, 9843

IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

OPINION AND REASONS FOR JUDGMENT

This is a proceeding by Roderick Jenkins applying for a preliminary examination and in the alternative for a speedy hearing on all the criminal charges filed against him and fully set forth in the applicant's petition.

An information was filed on these charges prior to petition for preliminary examination or alternatively for a speedy hearing.

As regards the motion for the right to a preliminary examination, the filing of the bill of information leaves it within the discretion of the Court to grant said hearing.

Inasmuch as the bills of information have charged the accused with a crime and inasmuch as the accused is now out on bail, a preliminary hearing would serve no useful purpose; therefore it is the opinion of the Court that a preliminary hearing be denied.

As regards the motion for a speedy hearing, the jury commission has been ordered to meet and to draw petit jurors to serve at the regular criminal term of court for Ibeville Parish to commence April 15th, 1968, at which term the trial of jury cases will commence and it is most impracticable to schedule a speedy trial before said jury

term as requested by applicant and the motion for a speedy trial should be denied.

Judgment will be rendered and signed according.

Thus done and signed in Plaquemine Parish of Iberville, La., this 1st day of March, 1968.

(Signature Not Legible)

Judge

(Filed March 1, 9:59 A.M. '68)

(Signature Not Legible)

Dy: Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

A TRUE COPY

Mar. 1, 1968

(Signature Not Legible)

Deputy Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

EIGHTEENTH JUDICIAL DISTRICT COURT
NOS. 9840, 9841, 9842, 9843
IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA
VERSUS
RODERICK JENKINS

JUDGMENT

These matters of applications by applicant were reviewed by the Court and for written reasons this day assigned it is ordered that the motions of applicant be refused.

Thus done, read and signed in open Court at Plaquemine, Iberville Parish, Louisiana, on this 1st day of March, 1968.

(Signature Not Legible)

Judge

(Filed Mar. 1, 9:59 A.M. '68)

(Signature Not Legible)

Dy. Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

A TRUE COPY
Mar. 1, 1968.

(Signature Not Legible)

Deputy Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

APPENDIX C-1

SCHEDULE OF BAIL INCREASE

Name	*Original Bail*	*Bail Increased To*
Jerry Sylvester	$10,000	$28,000
Terry George	$10,000	$28,000
Jerry Kinchen	$10,000	$28,000
Edgar Coleman	$10,000	$28,000
Tommy Craig	$10,000	$28,000
Alton Holden	$ 8,000	$20,000
Hugh Marionneaux	$ 8,000	$20,000
Emery C. Hendrick	$ 8,000	$20,000
Lloyd W. Kinchen	$ 8,000	$20,000
Emmett Tucker	$ 8,000	$20,000
Gene C. Fontenot	$ 8,000	$20,000
Billy Dardeau	$ 8,000	$20,000
Byron D. Vidrine	$ 8,000	$20,000

APPENDIX C-2

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBER .....

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

JERRY SYLVESTER

MOTION TO REINSTATE PRIOR BAIL BOND; ALTERNATIVELY TO REDUCE CURRENT BAIL BOND

JERRY SYLVESTER, appearing through counsel, respectfully moves the court to recall its recent order whereby defendant's prior bail bond was set aside and to reinstate his said prior bail bond; alternatively to reduce the current bail bond to an amount which shall be reasonable and fair, considering the exigencies and pertinent facts, say to the amount of not more than One Thousand ($1,000.00) Dollars for each criminal charge, in support whereof movant alleges that:

1.

Movant's original bail bond was set aside and the current one substituted therefor without notice to movant and without the granting of any hearing whatever; that the order of the court thus contrived or issued is null and void inasmuch as the process by which it was issued deprived movant of constitutional due process and equal protection secured by the Fourteenth Amendment to the United States Constitution.

2.

Furthermore, no good cause existed for the issuance of said order nor was any such good cause established and therefore said order cancelling movant's prior bond and supplanting it with the current bail bond is null and void.

WHEREFORE MOVANT PRAYS that the order of this court cancelling movant's prior bail bond and supplanting it with another one be recalled and set aside and movant's prior bond after being appropriately reduced, be reinstated; alternatively, movant prays that the current bail bond be reduced to an amount not in excess of One Thousand ($1,000.00) Dollars.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Defendant

APPENDIX D-1

IN THE

LOUISIANA SUPREME COURT

NUMBER 49,507

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON

VERSUS

HONORABLE DANIEL P. KIMBALL, Judge

In Re:

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

Docket Numbers: 9838, 9845, 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Defendant

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson, applying for a writ of certiorari, mandamus and prohibition as to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

Nineteen Bills of Information charging relator with the crime of public bribery have been filed and are pending against relator in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana. These Bills of Information are lodged in that court under Criminal Docket Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, 10,271, 9838 and 9845.

These criminal prosecutions against relator have been fixed for trial on the merits for September 30, 1968. Because of the approaching trial on the merits it is imperative that immediate action be taken on this application for writs of certiorari, mandamus and prohibition. The exigencies justifying the granting of these writs are as follows:

On September 13, 1968, a hearing on relator's motions for Bill of Particulars in each case was conducted. At the outset counsel for relator objected to the effort of the Attorney General to function exclusively as the prosecuting attorney in the nineteen cases filed against him.

Respondent Judge Daniel P. Kimball overruled relator's objection. Relator thereupon promptly reserved a Bill of Exception and prayed for leave of court to establish the factual basis of his Bill of Exception. Respondent Judge refused to permit relator to establish the factual basis of his Bill of Exception. As pointed out to respondent Judge in outlining what was intended to be established by the proffered evidence, counsel for relator stated:

> "The burden of my objection is that the Attorney General cannot come into court and effectively supplant the District Attorney and you can't mask an intent and a purpose to supplant by filing a motion which either disavows it or implicitly disclaims it. We have a right to show that the implicit disclaimer of supplanting the District Attorney is *not factually founded, that the contrary is true.* I think we can show, and I think your Honor will certainly probably concede or make a judicial, — make a statement acknowledging it judicially, that the District Attorney has not been managing these cases, but it has been exclusively handled by the Attorney General's Office, so we submit that the record at this time does not show anything of this kind. There is nothing, for example, if this question is presented to the Louisiana Supreme Court, in the event it should go there, should it ever be presented to that court. Counsel may talk all day long before that court and tell the court that the Attorney General's Office has been the one exclusively handling these cases, that the District Attorney made no appearances on no occasion, and that they effectively supplanted the District Attorney's Office, and all the Louisiana Supreme Court is going to tell counsel is that 'Counsel, I am sorry, but there is no factual basis at all in this record indicating what you are saying'."

Despite the insistence of relator's counsel that relator

be permitted to establish the factual basis of his objection, namely, that the Attorney General in fact had supplanted the District Attorney of Iberville Parish, Louisiana, without cause or justification and without legal authority and therefore the Attorney General was not the legally constituted person to prosecute relator, said respondent Judge refused to permit relator to exercise such a critically significant right despite the following plea by relator's counsel:

> "I would be horrified to believe, if Your Honor please, and I say this respectfully, that a litigant who is not entitled to his transcript by virtue of state law would be completely barred from utilizing the only possible legal vehicle available to demonstrate the factual predicate of all rulings of this court."

Similarily during said hearing relator excepted to the ruling of respondent judge as to his motions for Bills of Particulars in each of the seventeen charges filed against relator and reserved a Bill of Exception. Relator, through counsel, then moved for leave of court to establish the factual basis of his Bills of Exceptions. Respondent Judge denied the request and precluded relator from eliciting evidence to establish the factual basis of his Bills of Exceptions. Without this evidentiary predicate his Bills of Exceptions are wholly meaningless. On review to this Court, should the matter come on review, there will be nothing for this Court to base any intelligent evaluation of the validity of the rulings of respondent Judge. Notably among the things sought to be established as the factual predicate of his Bills of Exceptions was the fact that the seventeen (17) charges filed against relator relate to one continuous transaction as to which the State has arbitrarily carved out seventeen

(17) separate criminal charges when in fact each can amount to no more than separate counts as to one criminal act.

Not only has respondent Judge refused to permit relator to establish the factual basis of his Bills of Exceptions, but said respondent Judge has refused to have the court reporter supply relator with a transcript of his Bills of Exceptions unless relator pays for such transcript.

ISSUES AND QUESTIONS OF LAW PRESENTED

Only irreparable injury can be experienced by relator if this, his application for writs, is denied. This is true because the right to a hearing in a criminal proceeding in Louisiana is meaningless where the accused is denied the right to perfect his Bills of Exceptions, because without Bills of Exceptions, there is nothing for review by the appellate court. Thus, the grievous errors complained of in this application cannot be remedied by an appeal after trial on the merits. Confronting relator is the imminent prospect of being subjected to the ignominy of a public trial, to the financial burden of sustaining it, and to the scourge of criminality to result if he should be convicted. All this will occur under the auspices of a hearing where relator cannot effectively preserve the record so as to insure an effective appeal from any adverse decision. The totality of his prospect, in the event of a conviction, is that he will have to be prepared to be tried at least twice for the same offense.

Moreover, not only does the conduct of respondent Judge deprive relator of rudimentary procedural rights, but he is denied the equal protection of state laws, in that respondent Judge refuses to provide him with a

transcript of his Bills of Exceptions unless relator is prepared to pay for this, notwithstanding the unarguable law that such a transcript must be provided free of charge to him by the State.

ASSIGNMENT OF ERROR

1. It is prejudicial and reversible error for respondent Judge to have refused to permit relator to perfect his Bills of Exceptions by establishing the evidentiary basis of his Bills and to refuse to provide him with a transcript of his Bills of Exceptions without charge.

ARGUMENT

It is axiomatic in Louisiana that in criminal cases only formal Bills of Exceptions properly perfected can be considered by this court on appeal. Article 844 of the Code of Criminal Procedure expressly provides:

> "(a) The appellate court shall consider *only formal Bills of Exceptions* which have been signed by the trial judge in conformity with Article 845. * * *
>
> "(b) A formal Bill of Exception shall contain only the evidence necessary to form a basis for the bill and *must show* the circumstances and the evidence upon which the ruling was based. * * *"

Article 843 provides:

> "When a bill of exception is reserved, the clerk or the court stenographer shall immediately take down the objection, the ruling, and the *FACTS* upon which the *OBJECTION* is based. The matters, so taken down, shall be preserved among the records of the trial, shall constitute the bill of exception, and shall be a basis for a formal bill of exception."

This Court, of course, will never be in a position to consider the validity of the rulings of respondent Judge complained of by relator if the Bills of Exceptions reserved do not show "the circumstances and the evidence upon which" these rulings were based. As a consequence, relator is forever barred of an effective appeal as to these rulings. Thus he has no remedy by appeal as to these rulings. The most that he can expect from an appeal in the present posture of this litigation is a reversal of his conviction based upon the refusal of respondent Judge to permit him to establish his Bills of Exceptions as provided and directed by the laws of the State of Louisiana. For example, relator contends that he can show, and establish an evidentiary basis that will disclose, that the Attorney General of Louisiana has supplanted the District Attorney of Iberville Parish in connection with the prosecution of relator. On making such a showing, the ruling of the District Judge in permitting the Attorney General to function in such a capacity is erroneous and consequently results in a denial to relator of his constitutional liberties secured by the Constitution of Louisiana and by the United States. *Kemp v. Stanley,* 204 La. 110, 15 So.2d 1 (1943).

In effect, relator is being denied of a meaningful hearing; he is being denied of the effective assistance of counsel; he is being denied of an effective right of appeal. These denials are utterly irreversible, except by the granting of writs applied for in this instance. A fundamental requirement of due process, however, is the opportunity to an effective and meaningful hearing. In *Armstrong v. Manzo,* 85 S.Ct. 1187, at p. 1191, the United States Supreme Court said:

"A fundamental requirement of due process is

> *'the opportunity to be heard'. Grannis v. Ordean,* 234 U.S. 385, 394, 34 S.Ct. 779, 783. *It is an opportunity which must be granted at a meaningful time and in a meaningful manner."*

In the instant case the right to be heard necessarily embodies the right to establish the factual basis of Bills of Exceptions, inasmuch as these are the only vehicles available to relator and any other citizen similarly situated to preserve the record for appellate review. Respondent Judge, however, has already denied this right to relator and presumably will act consistently hereafter. The denial of such a right constitutes a denial of constitutional due process. In *Holt v. Commonwealth of Virginia,* 85 S.Ct. 1375, 1378, the United States Supreme Court held:

> *"The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. * * *"*

Not only has relator been denied of the right to effectively preserve his Bills of Exceptions as already pointed out, but relator has been denied of the right to be supplied without cost with a transcript of even the imperfect Bills of Exceptions. This respondent Judge has done despite the mandatory provisions of Article 843 of the Code of Criminal Procedure. The Court called upon Mrs. Janet L. Parker of Baton Rouge to serve as court reporter during this hearing. In transmitting only an uncertified copy of this transcript to undersigned counsel she advised:

> "Attached hereto please find a carbon copy of the hearing on the motions in re State of Louisiana v. Stanley H. Jackson, as ordered transcribed by you this past Monday, and our invoice in the amount of

> $115.50 to cover same. After talking with you this afternoon, I called Judge Kimball who told me that since the matter had not yet been tried and since you had ordered it transcribed, not the State, that you should be billed for same. We will be happy to give you a receipted invoice so that your client may be refunded his money by the State once the matter is decided."

There is no authority for respondent Judge to mulct your relator for any costs in connection with these criminal prosecutions of your relator. No citizen of the State of Louisiana is required to pay for a transcript of his Bills of Exceptions and the facts upon which his objection is based. The act of respondent Judge refusing to supply relator with such a transcript constitutes an invidious discrimination against relator and consequently denies him of constitutional due process and equal protection secured to him by the United States Constitution and the Constitution of the State of Louisiana.

Relator faces the immediate prospect of being prosecuted on nineteen separate occasions. On none of these occasions will he be permitted to establish the factual basis of his Bills of Exceptions as authorized by the laws of the State of Louisiana. On none of these occasions, therefore, will he be able to preserve the record so as to enjoy an effective appeal from the rulings of the district court. He will be thus without remedy on appeal. He is therefore in imminent danger of suffering irreparable injury unless this Honorable Court grants writs as prayed for.

WHEREFORE RELATOR PRAYS that writs of certiorari, mandamus and prohibition issue immediately directed to Honorable Daniel P. Kimball, Judge,

Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, ordering him forthwith to cease and desist from conducting any further hearings in connection with the prosecution of your relator and further ordering said respondent Judge to cause to be forwarded to this Court the records of these proceedings and further ordering a reversal of his said rulings herein complained of and commanding said respondent Judge to supply to relator a transcript of all Bills of Exceptions reserved by him without cost and to permit relator to establish the factual basis of his Bills of Exceptions or alternatively to show cause on a date designated by this Honorable Court why said writs of certriorari, mandamus and prohibition should not issue as prayed for.

AND FOR SUCH ADDITIONAL ORDERS as this Court shall consider proper and require.

J. MINOS SIMON
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Relator

APPENDIX D-2

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 24, 1968

No. 49,507

STATE OF LOUISIANA
v.
STANLEY H. JACKSON

In re: Stanley H. Jackson applying for writs of certiorari, mandamus and prohibition.

The application is denied. The defendant has an adequate remedy by appeal in the event of his conviction.

/s/ JBF
/s/ EHMcC
/s/ WBH
/s/ JWS

SUMMERS, J., dissents from the refusal to grant writs. It was error for the court to refuse to furnish relator with a certified copy of the transcript to serve as a basis for perfecting bills of exceptions, which could, in turn, support the allegations of this application.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
September 24, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX D-3

IN THE

LOUISIANA SUPREME COURT

NUMBER 49,510

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON

VERSUS

HONORABLE DANIEL P. KIMBALL, Judge

In Re:

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBER 10,270

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

ON APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson, applying for a writ of certiorari, mandamus and prohibition as to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

Relator is charged with the crime of public bribery in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, in nineteen Bills of Information. One of these Bills of Information entitled *State of Louisiana versus Stanley H. Jackson,* bearing criminal docket number 10,270, has been set for trial for September 30, 1968. Because of the approaching trial of the merits it is imperative that immediate action be taken on this application for writs of certiorari, mandamus and prohibition. The exigencies justifying the granting of these writs are as follows:

On September 23, 1968, an amendment to the Bill of Information as to criminal docket number 10,270 was permitted filed over relator's objection. At the outset counsel for relator objected to the effort of the Attorney General to function exclusively as the prosecuting attorney in connection with this criminal prosecution based on the unarguable fact that the Attorney General of the State of Louisiana had supplanted and superseded the District Attorney of the Eighteenth Judicial District, Mr. Sam Cashio. Respondent Judge Daniel P. Kimball overruled relator's objection. Relator thereupon

promptly reserved a Bill of Exceptions and moved for leave of court to establish the factual basis of his Bill of Exception. Respondent Judge refused to permit relator to establish the facts upon which the objection was based. Thereupon relator gave notice of his intention to apply to this Court for remedial writs. The objection, the motion for leave of court to establish the factual predicate of the objection and the giving of notice to apply for these writs are exemplified by the annexed copy of the transcript of the colloquy between relator's counsl and the court.

ISSUES AND QUESTIONS OF LAW PRESENTED

Despite the fact that this Court already has denied relator's application for remedial writs in connection with this criminal prosecution based upon the court's ruling that relator has a remedy by appeal, relator earnestly submits to the Court that such a ruling is erroneous and that in truth and in fact relator has no remedy by appeal from the refusal of respondent Judge to permit relator to establish the factual basis of his Bill of Exception. This application therefore presents to this Court a question of law which can never be again presented to this Court, because the validity of the ruling of the trial Judge can never effectively be brought before this Court on appeal. Any appeal to which relator might be remitted can never contain the essential facts upon which the objection is raised so as to permit this Court to pass upon the validity of that ruling. The effect of the ruling is to conduct a hearing where relator cannot effectively preserve the record so as to insure an effective appeal from any adverse decision. Relator therefore stands to suffer gross irreparable injury if his application is not granted.

ASSIGNMENT OF ERROR

1. It is prejudicial and reversible error, resulting in irreparable injury, for respondent Judge to have refused to permit relator to perfect his Bill of Exceptions by establishing the evidentiary basis of his exceptions.

ARGUMENT

It is axiomatic in Louisiana that in criminal cases anly formal Bills of Exceptions properly perfected can be considered by this Court on appeal. Article 844 of the Code of Criminal Procedure expressly provides:

> "(a) The appellate court shall consider *only formal Bills of Exceptions* which have been signed by the trial judge in conformity with Article 845. * * *
>
> "(b) A formal Bill of Exception shall contain only the evidence necessary to form a basis for the bill and *must show* the circumstances and the evidence upon which the ruling was based. * * *"

Article 843 provides:

> "When a Bill of Exception is reserved, the clerk or the court stenographer shall immediately take down the objection, the ruling, and the *FACTS* upon which the *OBJECTION* is based. The matters, so taken down, shall be preserved among the records of the trial, shall constitute the Bill of Exception, and shall be a basis for a formal Bill of Exception."

This Court of course will never be in a position to consider the validity of the rulings of respondent Judge complained of by relator if the Bills of Exceptions reserved do not show "the circumstances and the evidence upon which" these ruling were based. As a consequence,

relator is forever barred of an effective appeal as to these rulings. Thus he has no remedy by appeal as to these rulings. In the light of this Court's refusal to grant relator his previous application for remedial writs, based on the ruling that relator has a remedy by appeal, further analysis is indicated to demonstrate that the Court's view that relator has a remedy by appeal is not well-founded.

At the outset relator respectfully submits that if the Attorney General has superseded or supplanted the District Attorney of the Eighteenth Judicial District, then by virtue of the decision of this Court of *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1 (1943), relator cannot be legally prosecuted by the Attorney General. Proceeding forward from this postulate and assuming that in the instant case relator is convicted, this Court will not have before it the legality of the status of the Attorney General in connection with the prosecution of your relator. What will be before this Court is simply the legality of the ruling of respondent Judge in refusing to permit relator to establish the factual basis of his Bill of Exceptions. This Court on such an appeal would not then be in a position to determine the legality of the status of the Attorney General in the prosecution of your relator, for the simple reason that there would not be before this Court the evidentiary basis upon which relator's objection is founded. Thus, the most that this Court could do on such an appeal would be to reverse his conviction and order a new trial. On new trial the Attorney General could again function as prosecutor. If, on making an objection of an identical nature to the status of the Attorney General as prosecutor, on such a new trial, respondent Judge should elect on that occasion to com-

ply with the law and recognize relator's unarguable right to elicit and establish the facts upon which his objection is based, then for the first time this Court will have for consideration on appeal from an adverse decision the legality of the status of the Attorney General in acting as prosecuting attorney against your relator. Thus relator must be convicted twice before he can present to this Court the merits of his objection to the Attorney General functioning as prosecuting attorney against him. At best on such a second appeal this Court again would have to order a new trial, should it find that the Attorney General in fact has supplanted the District Attorney and that the Attorney General was without authority to prosecute relator. This Court then would have to again order a new trial. Thus relator would be subjected to three separate prosecutions for the same offense before the occasion would arise that he were proscuted by a duly constituted prosecutor.

The irreparable prejudice of such a consequence is unbelievably enormous. Relator of course would have to undergo the ignominy of three public trials. He would have to sustain the financial burden of such trials. And with the prevailing and pervasive bias and prejudice of respondent Judge in these proceedings, relator has no doubt but that on each conviction the presiding Judge will impose upon relator the maximum sentence, in consequence of which he will have to remain in prison until this Court reverses each of his convictions. Assuming that the period of time elapsing between his conviction and the hearing by this Court on his appeal will be not less than eight months, then he will have served a total of twenty-four months before the final adjudication on appeal by this Court.

In effect, relator is being denied of a meaningful hearing; he is being denied of the effective assistance of counsel; he is being denied of an effective right of appeal. These denials are utterly irreversible, except by the granting of writs applied for in this instance. A fundamental requirement of due process, however, is the opportunity to an effective and meaningful hearing. In *Armstrong v. Manzo,* 85 S.Ct. 1187, at p. 1191, the United States Supreme Court said:

> "A fundamental requirement of due process is *'the opportunity to be heard'. Grannis v. Ordean,* 234 U.S. 385, 394, 34 S.Ct. 779, 783. *It is an opportunity which must be granted at a meaningful time and in a meaningful manner."* .

In the instant case the right to be heard necessarily embodies the right to establish the factual basis of Bills of Exceptions, inasmuch as these are the only vehicles available to relator and any other citizen similarly situated to preserve the record for appellate review. Respondent Judge, however, has already denied this right to relator and presumably will act consistently hereafter. The denial of such a right constitutes a denial of constitutional due process. In *Holt v. Commonwealth of Virginia,* 85 S.Ct. 1375, 1378, the United States Supreme Court said:

> *"The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues.* * * *"

WHEREFORE RELATOR PRAYS that writs of certiorari, mandamus and prohibition issue immediately directed to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, ordering him forthwith to cease and desist from conducting any further hearings

in connection with the prosecution of your relator and further ordering said respondent Judge to cause to be forwarded to this Court the records of these proceedings and further ordering a reversal of his said ruling herein complained of and commanding said respondent Judge to permit relator to establish the factual basis of his Bills of Exceptions or alternatively to show cause on a date designated by this Honorable Court, why said writs of certiorari, mandamus and prohibition should not issue as prayed for.

AND FOR SUCH ADDITIONAL ORDERS as this Court shall consider proper and require.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

APPENDIX D-3

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 27, 1968

No. 49,510

STATE OF LOUISIANA

v.

STANLEY H. JACKSON

In re: Stanley H. Jackson applying for writs of certiorari, mandamus and prohibition.

The application is not considered. In reality applicant is seeking a rehearing on the refusal of his application in No. 49,507, which was denied on September 24, 1968, contrary to Section 5 of Rule IX of the rules of this Court.

/s/ EHMcC
/s/ JBH
/s/ WBH
/s/ JWS
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
September 27, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX D-4

LOUISIANA SUPREME COURT

DOCKET NUMBER 49,523

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON and JERRY SYLVESTER

VERSUS

HONORABLE DANIEL H. KIMBALL, ET AL.

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBERS 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, and 10,271

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

* * * *

EIGHTEENTH JUDICIAL DISTRICT COURT

CRIMINAL ACTION NUMBERS 9752, 9753, 9754, 9755, 10,314, 10,315, 10,316, and 10,317

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

WADE McCLANAHAN, EDGAR COLEMAN, TERRY GEORGE, JERRY KINCHEN, TOMMY CRAIG, JERRY SYLVESTER

ORIGINAL APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Stanley H. Jackson and Jerry Sylvester

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson and Jerry Sylvester, applying for writs of certiorari, mandamus and prohibition, respectfully represents that:

STATEMENT OF THE CASE

In the criminal prosecutions entitled *State of Louisiana v. Stanley H. Jackson,* bearing criminal actions numbers 10,255 through 10,271, lately pending before the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, relator Stanley H. Jackson is charged with the crime of public bribery. In the criminal prosecutions entitled *State of Louisiana v. Jerry Sylvester, et al.,* bearing criminal actions numbers 9752 through 9755, relator Jerry Sylvester is charged with the crime of criminal conspiracy to commit aggravated battery, and in criminal actions numbers 10,314 through 10,317, said relator Sylvester is charged with the crime of aggravated battery.

In due course the matter of *State of Louisiana v. Stanley H. Jackson,* bearing docket number 10,270 aforesaid was assigned for trial for September 30, 1968; on September ...., 1968, relator Stanley H. Jackson filed the following motion for a change of venue as to criminal action number 10,270 fixed for trial as herein aforesaid, to-wit:

"

MOTION FOR CHANGE OF VENUE

Stanley H. Jackson, appearing through counsel, makes this, his application for a change of venue,

not for the purpose of delay, but to obtain a fair and impartial trial, in support whereof movant alleges:

1.

Movant alleges that the captioned charge as well as the other eighteen charges filed against him arise out of and stem from a labor dispute between members of Teamsters Local Union No. 5 and non-union employees of W. O. Bergeron, Contractor, including W. O. Bergeron himself.

2.

The culmination of violence between these two opposing groups aforesaid was preceded by peaceful picketing activities on the part of those protesting the non-union employment practices of the said W. O. Bergeron; on the date of the violence aforesaid the protesting union members were set upon with firearms by the non-union employees of the said W. O. Bergeron and W. O. Bergeron himself, in response to which, as a matter of self-defense only, movant is informed that said aggravated criminal assault by the employees of the said W. O. Bergeron and W. O. Bergeron himself was returned in kind by persons other than movant.

3.

Movant alleges however that because of Governor John J. McKeithen's political antipathy for labor unions and his consuming inveterate hatred for Edward Grady Partin, Business Agent for Teamsters Local Union No. 5, and all members of Teamsters Local Union No. 5 aforesaid, he, the said Governor John J. McKeithen, willfully and deliberately set in motion a vile, intemperate and irresponsible plan or scheme to bring about the conviction and imprisonment of members of Teamsters Local Union No. 5 and any persons associated with them or

otherwise identified with them, regardless of their guilt or innocence, in the process of which he demanded and encouraged any form of punitive action against said union members and those associated with them or otherwise identified with them, including your movant, knowing, or having good reason to know, that the exchange of fire was provoked by non-union employees of W. O. Bergeron and W. O. Bergeron himself; in furtherance of that scheme it was determined and decided by McKeithen and those acting in concert with him that under no circumstances were any of the employees of the said W. O. Bergeron or W. O. Bergeron himself to be either charged or prosecuted for having provoked, initiated or participated in said violence.

4.

In furtherance of that scheme the said Governor John J. McKeithen took advantage of his position of high office, including his easy accessibility to the news media, and proceeded to develop and set in motion a barrage of irresponsible statements for widespread circulation through the news media, derogatory and accusatory of members of Teamsters Local Union No. 5 and those associated with them or otherwise identified with them, including your movant, including the repeated statement that members of Teamsters Local Union No. 5 were responsible for this violence, that they were hoodlums and gangsters of such magnitude and depravity as being able to give lessons to the infamous underworld organization known as the Mafia, and implied that former Sheriff Jessel Ourso of Iberville Parish, Louisiana, was associated with said Teamsters members so characterized and aided, abetted and coddled them in the fulfillment of their alleged nefarious deeds and objectives; said McKeithen furthermore threatened with ouster from public office any public official who was reluctant in the the prosecution —

the discriminatory prosecution – of all those who are identified with members of Teamsters Local Union No. 5, including said members.

5.

Movant alleges that he has been repeatedly linked in public statements and in press releases, including public statements over all news media, with the former Sheriff Jessel Ourso and members of Teamsters Local Union No. 5 aforesaid to such an extent that there is widespread prejudice against movant of such a nature as to make it impossible for him to receive a fair and impartial trial in Iberville Parish, Louisiana.

6.

In furtherance of the scheme aforesaid there have resulted massive arrests of members of Teamsters Local Union No. 5 and those identified therewith, including your movant; knowingly false charges have been filed against said persons; witnesses for and against said accused, including your movant, have been threatened in connection with the prospective giving of their testimony in connection with said criminal prosecution; the Attorney General of the State of Louisiana has deliberately without cause and contrary to the provisions of the State Constitution intruded himself into these prosecutions and has in fact supplanted, again without cause, the function and duties of the District Attorney of Iberville Parish, Louisiana; according to your movant's information all documents prepared in connection with the massive criminal prosecution of the persons accused as aforesaid, including your movant, have been prepared by the Office of the Attorney General of the State of Louisiana, and the function of the District Attorney of Iberville Parish, Louisiana, in respect thereto, has been of a mechanical nature only, in that he was perfunctorily requested to affix his signature to said documents, regardless

of their nature and purpose; that said state officials have knowingly suppressed evidence in their possession favorable to defense in said cases.

7.

Because of the vicious nature and widespread circulation of the ignominiously scandalous propaganda generated by state officials, including Governor John J. McKeithen, against your movant and the other persons accused as herein aforesaid, said accused persons have become the object of ridicule and condemnation by the general public; furthermore, movant alleges that the coercive influence exerted by the state officials as herein aforesaid has been so consummate, so overwhelming that movant and those other persons accused as herein aforesaid have been denied of the rudiments of the due process and equal protection, and movant believes that this condition of undue influence exists and will continue to exist indefinitely into the future and that it is impossible for that reason for movant and those similarly charged to receive a fair and impartial trial in Iberville Parish, Louisiana; that therefore venue for the captioned prosecution should be changed to a parish in the State of Louisiana where an atmosphere of neutrality and an attitude of justice and fair play may prevail.

Wherefore movant prays that a hearing be had on his motion for change of venue; that he be accorded the compulsory processes of this Court, and that after due hearing the venue for the captioned prosecution be ordered changed to a parish in the State of Louisiana where movant will be assured of a fair and impartial trial.

/s/ J. MINOS SIMON

J. MINOS SIMON
Attorney for Movant"

Prior thereto relator Jerry Sylvester through other counsel also filed a motion for a change of venue.

On Saturday, September 28, 1968, at 7:30 A.M., relator Jackson's undersigned counsel was served with the following communication, to-wit:

September 27, 1968

"To:
Mr. J. Minos Simon
Attorney at Law
1408 Pinhook Road
Lafayette, Louisiana

Mr. William C. Bradley
Attorney at Law
P. O. Box 475
Baker, Louisiana

Re:
State of Louisiana
Vs. No. 10,270
Stanley H. Jackson

State of Louisiana
Vs. Nos. 10-201-10,204 incl.
Emmett Tucker

State of Louisiana
Vs. Nos. 10,205-10,208 incl.
Gene C. Fontenot

State of Louisiana
Vs. Nos. 10,209-10,212 incl.
Billy W. Dardeau

State of Louisiana
Vs. Nos. 10,213-10,216 incl.
Byron B. Vidrine

State of Louisiana
Vs. Nos. 9840-9843 incl.
Roderick Jenkins

State of Louisiana
Vs. Nos. 10,179, 10,183,
10,187, 10,190
Hugh Marionneaux

State of Louisiana
Vs. Nos. 10,180, 10,184,
10,188, 10,192
Emery C. Hendrick

State of Louisiana
Vs. Nos. 10,181, 10,185,
10,189, 10, 193
Lloyd W. Kinchen

State of Louisiana
Vs. Nos. 9752-9755 incl.
Edgar Coleman

State of Louisian
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Terry George

State of Louisiana
Vs. Nos. 10,178, 10,182,
10,186, 10,191
Alton Holden

State of Louisiana
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Jerry Kinchen

State of Louisiana
Vs. Nos. 9752-9755 incl.
9756-9758 incl., 9961 &
10,012
Wade McClanahan
10,314-10-317 incl.

State of Louisiana
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Tommy Craig

State of Louisiana
Vs. Nos. 9752-9755 incl.
Jerry Sylvester 10,314-
10,317 inclusive

Gentlemen:

YOU ARE HEREBY NOTIFIED that the motions in the above numbered and entitled cases have been set for hearing on Monday, September 30, 1968, at 9:00 o'clock A.M.

Yours very truly,

/s/ JOSIE LIBERTO

JOSIE LIBERTO
Dy. Clerk of Court"

On Monday, September 30, 1968, approximately five minutes before court opened while in the courtroom of the Eighteenth Judicial Court in and for the Parish of Iberville, State of Louisiana, relators' counsel was given a copy of the following motion for change of venue filed on behalf of the State of Louisiana by Kenneth Scullin, Assistant Attorney General of the State of Louisiana, which motion, identical in nature as to both relators, reads as follows:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE
STATE OF LOUISIANA

Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, and 10,271

MOTION FOR CHANGE OF VENUE

Now into court, through undersigned counsel, comes the State of Louisiana, and with respect represents that:

1.

A motion for change of venue was filed by the accused in Criminal Action Number 10,270 on the docket of this Honorable Court to which the State has no objection, although in no way does the State admit to the facts alleged by the accused.

2.

Inasmuch as Criminal Action Number 10,270 is one of seventeen (17) related charges against the accused, the State desires to have a change of venue in each action, being in addition to Criminal Action Number 10,270, also Criminal Action Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,271.

3.

This application is not made for purposes of delay, but is made to obtain a fair trial in an impartial atmosphere for both the State and the accused.

Wherefore, the State of Louisiana prays that this motion be granted and Criminal Action Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271 be transferred to another parish.

JACK P. F. GREMILLION,
Attorney General
State of Louisiana

KENNETH C. SCULLIN,
Assistant Attorney General
State of Louisiana

SAMUEL CASHIO,
District Attorney
18th Judicial District
State of Louisiana

/s/ KENNETH C. SCULLIN"

"STATE OF LOUISIANA

VERSUS

WADE McCLANAHAN, EDGAR COLEMAN,
TERRY GEORGE, JERRY KINCHEN,
TOMMY CRAIG, JERRY SYLVESTER

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE
STATE OF LOUISIANA

Criminal Action Numbers 9752, 9753, 9754, 9755,
10,314, 10,315, 10,316 and 10,317

MOTION FOR CHANGE OF VENUE

Now into court, through undersigned counsel, comes the State of Louisiana, and with respect represents that:

1.

A motion for change of venue was filed by the various accused in Criminal Action Numbers 9752, 9753, 9754 and 9755 on the docket of this Honorable Court to which the State has no objection, although in no way does the State admit to the facts alleged by the various accused.

2.

Inasmuch as Criminal Action Numbers 9752, 9753, 9754, and 9755 are related to Criminal Action Numbers 10,314, 10,315, 10,316, and 10,317 and do in fact result from one criminal transaction, the State desires a change of venue in the four (4) latter criminal actions.

3.

This application is not made for purposes of delay, but is made to obtain a fair trial in an impartial atmosphere for both the State and the various accused.

Wherefore, the State of Louisiana prays that this motion be granted and Criminal Action Numbers 9752, 9753, 9754, 9755, 10,314, 10,315, 10,316 and 10,317 be transferred to another parish.

JACK P. F. GREMILLION
Attorney General
Baton Rouge, Louisiana

KENNETH C. SCULLIN
Assistant Attorney General
State of Louisiana

SAMUEL CASHIO
District Attorney
18th Judicial District
State of Louisiana

/s/ KENNETH C. SCULLIN"

Immediately upon the opening of court respondent Judge Kimball entertained the motion filed on behalf of the State of Louisiana, which utterly fails to state any cause whatever for a change of venue, and without the opportunity of conducting any hearing as to that motion or as to relators' motions for change of venue, and over the objection of relators' counsel, said respondent judge ordered all of these criminal prosecutions to be transferred to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana; this action was taken despite the protest of relators herein that there was no basis whatever for such an order and that the distance of the First Judicial District Court from the domicile of your relators herein was so prohibitively great as to constitute an intolerable hardship on relators.

On or about October 4, 1968, relators were informed that prior to September 30, 1968, and more particularly on or about September 26, 1968, the Attorney General

of Louisiana individually and/or by and through his assistants, who have taken over completely these district court prosecutions, decided and declared the intention to have all of these criminal prosecutions transferred to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, the domicile of Harry A. Roberts, former chief investigator for the Labor-Management Commission of Inquiry of the State of Louisiana, the officers and agents of which have been instrumental in initiating these criminal prosecutions, for the purpose of obtaining a trial of these criminal prosecutions in an anti-labor union atmosphere and of inflicting as much hardship and inconvenience as possible against your relators; your relators further believe that after said decision was reached and prior to September 30, 1968, said respondent Judge Kimball extrajudicially agreed to transfer said criminal prosecutions to the aforesaid First Judicial District in fulfillment of the wishes of the officials of the Attorney General's Office of the State of Louisiana.

Upon being so informed relator Stanley H. Jackson prepared and submitted to Judge G. Ross Kearney on October 9, 1968, the following motion to recall the change of venue order of September 30, 1968, to-wit:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE, LOUISIANA

Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271

MOTION TO RECALL THE ORDER OF THE COURT OF SEPTEMBER 30, 1968, RELATIVE TO CHANGE OF VENUE

Stanley H. Jackson, appearing through counsel, for cause to recall the order of this court of September 30, 1968, whereby venue in the captioned proceeding was changed to the First Judicial District Court, Parish of Caddo, State of Louisiana, respectfully represents that:

1.

Movant is informed, believes and therefore states that the change of venue order complained of herein was determined and dictated to the court by the Attorney General and his assistants, who have supplanted the District Attorney of Iberville Parish, Louisiana, in an effort to appease the principal prosecution witness, W. O. Bergeron, and that the order changing said venue to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, was the product of collusion between the presiding Judge, Daniel P. Kimball, and the Attorney General and his assistants, to the grave prejudice of your movant herein, including the denial to your movant of equal and impartial justice.

2.

Movant further alleges that the selection of the First Judicial District Court for the Parish of Caddo as the venue to which this litigation should be changed is arbitrary and capricious; furthermore it visits upon your movant an undue hardship in that it requires your movant to travel the distance between Plaquemine, Louisiana, his domicile, and Shreveport, Louisiana, the domicile of said court for

said trial which entails the traveling of a distance of approximately 400 miles; that the order for the said change of venue to Shreveport, Louisiana, as herein aforesaid, is wholly unjustified in that presiding Judge Daniel Kimball conducted no hearing whatsoever, and said order is based upon no evidence justifying the same.

3.

Said order is an absolute nullity for the reason that said Judge Kimball refused to conduct any hearing to determine first the cause for the removal and, second, in the event good cause is shown by the evidence, the acceptability, desirability and convenience of the court to which the venue may be changed; therefore said order should be ordered recalled and a hearing on movant's motion for change of venue should be conducted pursuant to the requirements of the laws of the State of Louisiana.

4.

Movant further alleges that the motion for change of venue filed by the State of Louisiana as to criminal actions numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271 is legally insufficient to sustain the order changing the venue for the prosecution of said causes. As shown by said motion the State fails to allege any facts whatever in support of its claim for change of venue as to these criminal prosecutions. In fact the State disavows the factual predicate of your movant's motion for change of venue as to criminal action number 10,270; therefore as a matter of law said motion for change of venue does not state a cause for a change of venue; furthermore no hearing was had as to said motion for change of venue; the order of the court effecting a change of venue to the

First Judicial District Court of Louisiana therefore is an absolute nullity.

5.

Movant further alleges that for the reasons set forth in his application to recuse Judge Daniel Kimball, and for the reasons of collusive action set forth herein, said Judge Daniel Kimball should not be permitted to hear this motion.

6.

The State of Louisiana, acting through the Attorney General, procured the change of venue to the District Court in Shreveport, Louisiana, solely for the purpose of inconveniencing and harassing movant and the other defendants and members of Teamsters Local Union No. 5; prior to said change of venue order said Attorney General had caused summons to issue to defendants to appear before the District Attorney of Iberville Parish, Louisiana, and also caused such summons to issue to other persons who are members of said union and who are otherwise related to members thereof, and secured an order for said appearance from Judge Kimball ostensibly for the purpose of further investigating matters relating to the captioned criminal prosecutions; movant alleges that since the issuance of the order purporting to change said venue to Shreveport, Louisiana, said Attorney General has similarly caused to be issued summons for defendants and other members of Teamsters Local Union No. 5, as well as the wife of defendant Stanley H. Jackson, to appear before the District Attorney of the First Judicial District in Shreveport, Louisiana.

7.

Movant alleges that said summons are being issued in bad faith and solely for the purpose of

harassing the defendants and others mentioned and to inflict upon them gross inconveniences and hardship; no provision is made to defray the expenses of these persons so summoned to travel the distance of over 800 miles to and from Shreveport or to defray the expenses of hotel accommodations and eating; these persons are compelled to attend in response to said summons or face contempt citation for failure to do so and thus must experience an outlay of cash for the expense of attending in response to said subpoena without any recourse for reimbursement; in order to avoid such harsh hardship it is necessary that the order effecting a change of venue to the First Judicial District rendered on September 30, 1968, be suspended until a hearing on this motion to recall may be had.

WHEREFORE MOVANT PRAYS that the order of this Honorable Court of September 30, 1968, be ordered suspended until a hearing may be had on the motion to recall.

MOVANT FURTHER PRAYS that a hearing on the motion to recall be granted and that the State of Louisiana be ordered to show cause on a date to be fixed by this court why the order of this court of September 30, 1968, effectiing a change of venue as to all of the criminal actions mentioned in the title hereof to the First Judicial District Court, Parish of Caddo, State of Louisiana, should not be recalled and set aside; that furthermore a hearing be had on movant's original motion for change of venue and after due hearing that a change of venue be granted and the venue be changed to a district court more conveniently located and ap-

propriate to the exigencies of this case and consonant with the due administration of justice.

/s/ J. MINOS SIMON
Attorney for Movant"

ORDER

Considering the foregoing motion:

IT IS ORDERED that the order of the court of September 30, 1968, effecting a change of venue to the First Judicial District Court of Caddo Parish, Louisiana, be and the same hereby is suspended until a final hearing may be had on the foregoing motion.

IT IS FURTHER ORDERED that a rule nisi do issue directed to the State of Louisiana, by and through Honorable Sam Cashio, District Attorney in and for the Parish of Iberville, State of Louisiana, commanding him to show cause on the ..... day of ....., 1968, why the order of the court on September 30, 1968, should not be recalled and a hearing be granted on Stanley H. Jackson's application for a change of venue and that after such hearing venue for the prosecution of the captioned cases be changed to a district court more conveniently located and apropriate to the exigencies of this case and consonant with the due administration of justice.

OFFICIALLY GRANTED on this ..... day of October, 1968, at ....., Louisiana.

District Judge

An identical motion was prepared and presented on behalf of relator Jerry Sylvester.

Said motions were presented to Judge Kearney at the Courthouse of the Eighteenth Judicial District Court in and for the Parish of West Baton Rouge, Port Allen, Louisiana; upon being presented with said motion said Judge Kearney advised undersigned counsel that he would have to confer with respondent Judge Kimball, who then was also at said courthouse building; after a brief conference with Judge Kimball said respondent Judge Kearney advised undersigned counsel that he would not sign the accompanying order and would take no action on said motion inscribing on said motion, "I decline to sign the above motion".

Relators aver that said application to recall was not presented to respondent Judge Kimball, though he was consulted as to it by Judge Kearney as herein afeoresaid, because relators verily believed and continue to believe that said Judge Kimball is biased, prejudiced and personally interested in the captioned criminal prosecution to such an extent that he is unable to conduct a fair and impartial trial or to fairly and justly consider any judicial matters concerning relators' criminal prosecutions, and because of that belief said relators filed simultaneously with the recall motion, the following motion to recuse the said Judge Kimball, as to which no action was taken, to-wit:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT

Numbers 10,255, et al.

PARISH OF IBERVILLE, LOUISIANA

MOTION TO RECUSE

Stanley H. Jackson, appearing through counsel, for cause to recuse Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District, Parish of Iberville, Louisiana, respectfully represents that:

1.

Daniel P. Kimball, Judge of the Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, is biased, prejudiced and personally interested in the captioned criminal prosecution to such an extent that he would be unable to conduct a fair and impartial trial and therefore should be recused.

2.

More particularly movant alleges that the said Judge Kimball is functioning under the threat of ouster from office made and communicated to him and other public officials by John J. McKeithen, Governor of the State of Louisiana; the captioned prosecution is part and parcel of a plan on the part of the Governor of the State of Louisiana to prosecute members of Teamsters Local Union No. 5 and any persons identified with them, including your movant, without regard to the guilt or innocence of such persons; that said Governor McKeithen has vowed to oust from public office any public official, including Judge Kimball, who showed the slightest reluctance, for any reason, in connection with the

prosecution of such persons; that the said Judge Kimball therefore is unable to conduct a fair and impartial trial if for no reason other than the coercive influence of the said Governor McKeithen.

3.

Furthermore movant alleges that said Judge Kimball heretofore has intentionally denied your movant of constitutional due process and equal protection secured to him by the Constitution of the United States and the Constitutition of the State of Louisiana and has otherwise demonstrated a bias and prejudice against your movant.

4.

More particularly movant alleges that on August 22, 1968, said Judge Kimball caused certain parish officials to telephone your movant to advise him that he, the said Judge Kimball, desired to talk to your movant; at the time in question your movant was engaged in his employment, the only means by which he sustains himself and his family; movant alleges that he was unable to respond to this request to go have an audience with Judge Kimball; when your movant failed to respond, said Judge Kimball, without any authority in law whatever but solely in an exhibition of his personal bias, ordered the issuance of a bench warrant and caused your movant to be arrested and taken from his place of employment and brought to his chambers in the District Courthouse Building at Plaquemine, Louisiana, and there engaged your movant in a discussion concerning whether or not your movant was an indigent defendant sufficient to warrant the appointment of counsel to defend him; at that time however that issue had already been resolved by the court in Open Court for some weeks previous and said Judge Kimball had already appointed counsel to represent your movant; said action of said Judge

Kimball simply exemplifies his personal distate and bias against your movant and his inability to act fairly and impartially as to your movant in or out of court.

5.

Furthermore movant alleges that on September 13, 1968, during the course of a hearing relative to the charges filed against your movant, movant's counsel objected to certain rulings of Judge Kimball, reserved a Bill of Exception in respect thereto and sought to establish the factual basis of his said Bill of Exception, all in keeping with the provisions of Articles 843, et seq., of the Louisiana Code of Criminal Procedure; said Judge Kimball however arbitrarily and capriciously refused to permit your movant to establish the factual basis of his Bill of Exception; that the effect of such conduct is to deny movant of the right to present the facts upon which his objection is based and thus of the right to permit an effective review on appeal of the rulings of said Judge Kimball.

6.

Moreover movant alleges that said Judge Kimball refused to permit the court reporter to supply to your movant without charge a transcript of the Bills of Exceptions which he had reserved during the course of said hearing, despite the provisions of state law to the effect that your movant unconditionally was entitled to such a transcript.

7.

Movant alleges that again on September 23, 1968, said Judge Kimball took a similar course of action and refused to permit movant to establish the factual basis of his Bills of Exceptions reserved to rulings made by Judge Kimball and objected to by movant.

8.

Movant further alleges that said Judge Kimball's conduct in all of the other criminal prosecutions allied to the general plan of discriminatory criminal prosecution herein aforesaid has been of a similar nature; notably among the incidences reflecting his biased course of conduct is his arbitrary act in connection with the matter of *State of Louisiana v. Jerry Sylvester,* bearing criminal docket numbers 9752, 9753, 9754, 9755, 9760, 9761, 9762, 9763, being one of the cases involved in the aforesaid plan, where said District Judge acting extrajudicially and beyond his jurisdiction, instructed the Clerk of Court of the Eighteenth Judicial District, Parish of Iberville, State of Louisiana, to refuse to cause requested subpoenas to issue for the appearance of witnesses on behalf of said defendant needed in connection with a hearing to be conducted by said Judge Kimball assigned by him on a date certain; that on the assigned date of said hearing, witnesses of the said Sylvester were not made to appear and he was without witnesses to substantiate his position in respect to said hearing; thus he was denied of constitutional due process, namely the compulsory processes of witnesses as a result of the arbitrary and capricious prejudicial acts of the said Judge Kimball; that said Judge Kimball is so biased and prejudiced against movant and those similarly situted as to make it impossible for him to conduct a fair and impartial trial and therefore he should be recused.

9.

Movant further alleges that on September 30, 1968, the trial of the action of *State of Louisiana v. Stanley H. Jackson,* number 10,270, was scheduled to commence; movant, acting through counsel, requested the issuance of subpoenas for said trial; on arriving in court however on September 30, 1968,

neither the jurors scheduled to appear for said trial nor the witnesses whose presence was requested by movant were present; said subpoenas had been cancelled at the instruction of said Judge Kimball according to your movant's information and the trial of his case had arbitrarily been set aside and the jurors instructed not to appear.

10.

Furthermore on said date there was scheduled for hearing movant's motion for change of venue; said respondent Judge refused to conduct any hearing in respect thereto but granted said motion and ordered the venue to be changed to the First Judicial District Court, Parish of Caddo, State of Louisiana, some 400 miles from the domicile of your movant.

11.

Furthermore said Judge Kimball entertained a motion to change venue filed by the State of Louisiana and acted thereupon and ordered the venue changed as to all of the pending cases against your movant herein; where said application is wholly insufficient in law to justify any action whatever and furthermore without conducting any hearing in respect thereto.

12.

Movant further alleges that according to his information the change of venue order of September 30, 1968, was determined and dictated to the court by the Attorney General and his assistants, who have supplanted the District Attorney of Iberville Parish, Louisiana, in an effort to appease the principal prosecution witness, W. O. Bergeron, and that the order changing said venue to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, was the product of collusion between

the presiding judge, Daniel P. Kimball, and the Attorney General and his assistants, to the grave prejudice of your movant herein including the denial to your movant of equal and impartial justice.

WHEREFORE MOVANT PRAYS that after due hearing had on this motion, the same be granted and that Judge Daniel P. Kimball be ordered recused from functioning as judge in connection with any prosecution against your movant.

/s/ J. MINOS SIMON
Attorney for Movant"

An identical motion to recuse Judge Kimball was filed by relator Sylvester.

During the pendency of these criminal proceedings and of similar criminal proceedings, some of which are enumerated in the notice of hearing served on undersigned counsel on Saturday, September 26, 1968, at 7:30 A.M., the Attorney General, acting individually and/or through his assistants, abusively invoked the provisions of Article 66 and caused summons to issue to those accused of crime as well as to others to appear at the office of the District Attorney of the Eighteenth Judicial District, Parish of Iberville, State of Louisiana, for the purpose of being interrogated concerning what was described as a matter under investigation; upon their arrival at the office of the said District Attorney, said individuals were confronted by assistants of the Attorney General of the State of Louisiana who had no authority whatsoever to function under the auspices of the provisions of said Article in the Code of Criminal Pro-

cedure; that the Attorney General and his assistants invoked the provisions of said Article of the Louisiana Code of Criminal Procedure solely for the purpose of harassing and inconveniencing these defendants.

Relators aver that the Attorney General and his assistants have again renewed their harassing actions inasmuch as already they have caused similar summons to issue from the First Judicial District Court in and for the Parish of Caddo, State of Louisiana; among those thus far served with such summons is relator Jackson's wife; she has been ordered to appear before the office of the District Attorney of Caddo Parish, Louisiana, on October 10, 1968; should she fail to appear, under the plan provisions of Article 66 of the Code of Criminal Procedure, she could be adjudged in contempt of court and sentenced to imprisonment; said state officials are knowingly attempting to compel relator Jackson's wife to testify against relator Jackson or else to incur the expense and hardship of travelling a distance in excess of 800 miles just for the purpose of fulfilling the whimsical desires of said state officials.

Relators furthermore are being denied of the right to be supplied with a transcript of their bills of exceptions and evidence in connection therewith; on October 3, 1968, relators' counsel sent the following telegram to the appointed court reporter, to-wit:

October 3, 1968

"Mrs. Janet L. Parker.
Janet Parker & Associates
Baton Rouge Savings & Loan Bldg.
Baton Rouge, Louisiana

Re: State v. Stanley Jackson and Jerry Sylvester.

I need immediately transcripts of Bills of Exceptions concerning September 23, 1968, hearing.

/s/ J. MINOS SIMON"

and received the following written response from Mrs. Parker, to-wit:

4 October, 1968

"J. Minos Simon
1408 Pinhook Road
Lafayette, Louisiana 70501

Re: State v. Stanley Jackson and Jerry Sylvester.

Dear Mr. Simon:

We are in receipt of your wire of 3 October, 1968, re transcript of bills of exception taken in the above-captioned matter on 23 September, 1968.

Since these matters are no longer in the hands of the officials of Iberville Parish, once more we are faced with the problem of to whom to look for payment once the transcript is completed. Do you pay for it? Does the Iberville Parish Police Jury pay for it? Or is it paid for by Caddo Parish? Since this transcript will run approximately 120 to 130 pages at a cost of $1.50 each, the total bill will be in the neighborhood of $200. When you have gotten an order from someone who is to be responsible for this payment, we will be happy to proceed with same, but since we are free-lance reporters and not paid a salary by anyone, it is most necessary that we have this matter straightened out before embarking on a job of this magnitude.

Thanking you for your attention to this matter, we are,

Yours very truly,

JANET L. PARKER & ASSOCIATES

/s/ MRS. JANET L. PARKER

cc: Honorable Theresa Delacroix, Clerk of Court
Parish of Iberville, Plaquemine, Louisiana"

Such a refusal constitutes a denial of constitutional due process and equal protection.

QUESTIONS OF LAW PRESENTED

Can a district court judge grant a change of venue without a hearing? That essentially is the primary question presented by this application. If so, by what authority and under what circumstances? Does the failure of the State to resist a defendant's motion for change of venue supply the proof required in such instances? Stated otherwise, is a district court judge authorized to surrender the jurisdiction of the district court, without hearing any evidence, where the State does not oppose a defendant's motion for change of venue?

Can a change of venue be granted on the motion of the State, where no factual allegation of cause is pled?

Does a hearing on a change of venue motion contemplate both (a) the question of the cause for such a change and (b) the question of the selection of another appropriate venue to which the case may be assigned? Can a trial judge willy-nilly select a venue without giving an opportunity to the complaining party of producing evidence as to the reasonableness of the selection?

Can a district judge legally refuse to take official action on a recall motion, where it is alleged that the change of venue order sought to be recalled was the product of collusion between the presiding judge and the prosecuting attorney and was obtained without a hearing?

How can a defendant in a criminal case challenge the

undue hardship question created by a change of venue order other than at the hearing for change of venue, and when such a hearing is arbitrarily denied, then by way of a motion to recall filed in the same court? Is not such a hardship question moot after trial? Can such a hardship question ever constitute a basis for a motion in arrest of judgment or for a reversal of a guilty verdict? Where hardship in a criminal prosecution involves, among other things, an inordinate expenditure of funds to defray traveling and lodging expenses occasioned by a change of venue order, and where such hardship is inflicted on a defendant without a hearing as to the availability of a judicial forum more conveniently located, the selection of which would practically eliminate the hardship, is not such a defendant denied of his property rights without due process of law?

Is it not patently a gross abuse of discretion, requiring instant reversal, for a trial judge to transfer a trial to another court, the situs of which is in excess of 800 miles to and from a defendant's domicile, where he conducts no hearing and receives no evidence to determine the legal availability of a judicial forum more conveniently located?

ASSIGNMENT OF ERROR

1. It was error for respondent Judge Kimball to have ordered a change of venue without a hearing and for respondent Judge Kearney to have refused to conduct a hearing as to relators' motion to recall said order.

ARGUMENT

The essential legal question before the court is as elementary as the error complained of is fundamental.

Under the plain provisions of Article 622 of the Code of Criminal Procedure a defendant is entitled to a hearing on his motion for a change of venue. Article 622 reads as follows:

> "A change of venue shall be granted when the applicant *proves* that by reason of prejudice existing in the public mind or because of undue influence, or that for any other reason, a fair and impartial trial cannot be obtained in the parish where the prosecution is pending.
>
> In deciding whether to grant a change of venue the court shall consider whether the prejudice, the influence, or the other reasons are such that they will affect the answers of jurors on the voir dire examination or the testimony of witnesses at the trial."

By the clear provisions of this Article it is self-evident that no change of venue can be granted without proof that there exists the prejudice contemplated by the law. Absent such proof there can be no change of venue.

With the adoption of Article 623 of the Code of Criminal Procedure the question of prejudice contemplated by Article 622 is not limited to the territorial confines of the parish in which the court is sitting. It extends to any other parish to which the case might be transferred. Prior to the adoption of Article 623, by virtue of the provisions of Article 293 of the 1928 Code of Criminal Procedure when the change of venue was granted the transfer had to be to "an adjoining parish of the same judicial district or to a parish of an adjoining district". Thus the discretion of the trial judge as to the selection of the court to which the case might be transferred was somewhat stringently circumscribed. This is no longer the case. Article 623 authorizes a trial judge to transfer

a case to any parish in the State. The primary consideration and purpose of such a hearing is to insure an accused of a fair and impartial trial, not only in the parish where venue originates, but also in the parish to which the case may be transferred. No judge is presumed to have the clairvoyance to make a determination as to either without a hearing of the evidence. Such a hearing can be conducted by no court other than the one of original venue. The court to which a case is transferred is without authority to gainsay or challenge the validity of the order of transfer. *State v. Morgan,* 147 La. 205, 84 So. 589; *State v. Mejia,* 250 La. 518, 197 So.2d 73.

To say that relators got what they wanted, because they filed a motion for change of venue, and therefore cannot be heard to complain is to gloss over the essence of the issue presented. Relators sought but were denied a *hearing* as to their claim for a change of venue. At such a hearing they had the unquestioned right to introduce evidence to establish the nature of the prejudice complained of and simultaneously to establish the outer limits of its territorial expanse. If similar prejudice as that claimed in their motion for change of venue exists in the First Judicial District at Caddo Parish, Louisiana, relators had the undisputed constitutional right to produce evidence thereof at the hearing on their motion for change of venue. Moreover, while the court of original venue has the power to change it on receiving due proof justifying such action to another parish of the state, such a trial judge is not thereby invested with unlimited power to willy-nilly select any parish in the state as the judicial forum to which he may assign the trial of the case. Considerations of oppressive costs and inconvenience par-

ticularly to the defendant are vitally at issue. Such factors alone may be of such a nature as to unduly impair a defendant in his defense to criminal prosecution.

The refusal of Judge Kimball to conduct a hearing is contrary to the express provisions of state law and to the well-established jurisprudence of Louisiana. The refusal of respondent Judge Kearney to conduct a hearing as to relators' application to recall the order changing the venue is likewise contrary to state law. *State, ex rel., Williams v. Gray,* 109 La. 127, 33 So. 108.

The precise question presented already has been decided by this court since 1893 in the case of *Bruillette, et al. v. Judge of Tenth Judicial District Court for Parish of Avoyelles,* 45 La.Ann. 243, 12 So. 134. In granting the supervisory writs applied for as to the validity of the change of venue order this court said: (12 So. at P. 134)

> " * * * where the issue is as to the validity of a change of venue, where relators are forced to meet a trial in a parish other than that of their domicile, and where the state is exposed to the labor and expense of a trial which will prove fruitless, the interest of justice will be promoted by an immediate determination of the question presented, in order that irregular proceedings may be corrected and legal ones substituted therefor."

The factual issues are described by the court in these words: (12 So. at P. 134)

> " * * * It appears that at a sitting of the court out of term, and immediately after the filing of informations against the relators, and after they have voluntarily waived arraignment and entered their pleas of not-guilty, the district attorney presented a motion for a change of venue on the ground that the state of public sentiment in the

> parish was such that a fair and impartial trial could not be had, which motion was accompanied by his affidavit to the facts stated. The judge, *without hearing any evidence,* immediately granted the order, and, notwithstanding the relators, by counsel, objected thereto, maintained the same, reserving counsel's right to embody the objections in a bill of exception, which was accordingly done."

The statute then under consideration by the court is comparable in its demands and sanctions to the provisions of Article 622 involved in the instant application. In part pertinent it provided: "That whenever it shall be established, in any criminal prosecution, *by legal and sufficient evidence,* that a fair and impartial trial cannot be had in the parish where the case is pending, the judge of any court having jurisdiction of the case may, upon application of the Attorney General, District Attorney, or District Attorney pro tempore for a change of venue, grant such application." In reversing the change of venue order this court held; (12 So. at P. 135)

> "The statute so obviously contemplates a trial of the issue on evidence to be adduced, including the right of accused to cross-examine the witnesses of the State, and also, if so desired, to produce witnesses in their own behalf, that we are bound to conclude that the learned judge must have inadvertently overlooked its existence. The mere affidavit of the district attorney, attached to the motion, is cerainly not the 'legal and sufficient evidence' required by the statute; nor is the judge's own personal knowledge of the sentiment of the community sufficient. He could act only on 'legal and sufficient evidence' and not upon the mere opinions of the district attorney or of himself, however conscientious and even well-founded they may be."

This is the identical situation presented in the instant

case, with the exception that there is no evidence to indicate that respondent Judge Kimball acted out of consideration of the opinions of the District Attorney as to the existence of improper prejudice in Iberville Parish, Louisiana. On the contrary under the express allegations of the motion to recall, it is set forth that the selection of the First Judicial District, Parish of Caddo, State of Louisiana, was made and insisted upon by the prosecuting attorney and concurred in by respondent Judge Kimball before the matter was ever presented to the court. For these reasons therefore the remedial writs applied for should be granted forthwith.

Relators further represent to the court that they continue to be denied of a transcript of their bills of exception. The district court, functioning through respondent Judge Kimball, continues to refuse to supply them with a transcript of their bills of exception. The latest excuse for this failure is the apprehension of the court-appointed reporter that she may not be compensated for her effort. Respondent Judge Kimball is knowingly indulging this refusal despite the unambiguous holding of this court as to that question in the case of *State of Louisiana v. Mejia*, supra.

WHEREFORE RELATORS PRAY that writs of certiorari, mandamus and prohibition forthwith issue herein as provided for by law and accordingly,

(a) Honorables Daniel H. Kimball, R. Ross Kearney, William J. Fleniken, John A. Dixon, Jr., Henry F. Turner, William F. Woods, James R. Alexander, Samuel C. Cashio, John A. Richardson, and Jack P. F. Gremillion be forthwith enjoined and prohibited from taking any action whatsoever in connection with the criminal prosecutions herein mentioned;

(b) That respondent Judge G. Ross Kearney be commanded forthwith to conduct a hearing as to relators' application for a recall of the change of venue order of September 30, 1968, and as to relators' motion to recuse respondent Judge Daniel H. Kimball;

(c) That respondent Judges Kearney and Kimball forthwith be ordered to forward the record of this cause to this Honorable Court for its review.

In the alternative relators pray that alternative writs of certiorari, mandamus and prohibition issue and that all of the respondents herein be ordered to show cause on date to be designated by this Honorable Court why said writs of certiorari, mandamus and prohibition should not issue as prayed for, and why furthermore relators should not be provided forthwith with a transcript of all bills of exceptions reserved and evidence and proffers of evidence made in connection therewith.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Relators

STATE OF LOUISIANA
PARISH OF LAFAYETTE

J. MINOS SIMON, being first duly sworn, did depose and say that he is counsel in the foregoing application for writs of certiorari, mandamus and prohibition; that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

Affiant further states that a copy of the foregoing application was forwarded to and served upon each of the following individuals by mailing the same in a properly addressed envelope, postage prepaid, to-wit:

Honorable Daniel H. Kimball
Judge, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable G. Ross Kearney
Judge, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable Henry F. Turner
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable William F. Woods
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable William J. Fleniken
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable John A. Dixon, Jr.
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable James R. Alexander
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable Samuel C. Cashio
District Attorney, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable John A. Richardson
District Attorney, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable Jack P. F. Gremillion
Attorney General of State of Louisiana
State Capitol
Baton Rouge, Louisiana

Further affiant sayeth not.

/s/ J. MINOS SIMON

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 10th day of October, 1968, at Lafayette, Louisiana.

(Signature Not Legible)

Notary Public

APPENDIX D-4

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

October 11, 1968

NO. 49,523

STATE OF LOUISIANA

vs.

STANLEY H. JACKSON and JERRY SYLVESTER

In re: Stanley H. Jackson and Jerry Sylvester applying for writs of certiorari, mandamus and prohibition.

Writs refused.

Relators have made no showing which would warrant the exercise of our supervisory jurisdiction. Furthermore, they have an adequate remedy by appeal in the event of their conviction.

/s/ EHMcC
/s/ JBF
/s/ JBH
/s/ WBH
/s/ FWS
/s/ JWS
/s/ MEB

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
October 11, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX E-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION NO. 68-177

STANLEY H. JACKSON

VERSUS

JACK P. F. GREMILLION,
KENNETH SCULLIN and
BARRY MARIONNEAUX

ORIGINAL COMPLAINT

1.

JURISDICTION

(a) The jurisdiction of this court is invoked under Title 28, United States Code, Section 1331, this being a civil action in equity that arises under the Constitution and laws of the United States, and Title 42, United State Code, Sections 1981, 1983 and 1988, this being an action in which a citizen of the United States contends that he has been, is now and threatens to continue to be denied of rights, privileges and immunities secured to him by the Constitution of the United States and of the full and equal benefits and protection of pertinent laws of the State of Louisiana, and thus, is deprived of his legal rights as a citizen of the State of Louisiana and of the United States contrary to the Constitution and laws of the United States.

(b) The jurisdiction of this court is further invoked under Title 28, United States Code, Section 1343 (3) (4), this being an action for the redress of the deprivation, under color of law, of rights, privileges and immunities secured to complainant as a citizen of the United States by the Constitution and laws of the United States.

2.

FACTS

(1) The State of Louisiana, appearing through Jack P. F. Gremillion, Attorney General of the State of Louisiana, and his agents and assistants, including Kenneth Scullin and Barry Marionneaux, has filed seventeen Bills of Information against your petitioner, Stanley H. Jackson, charging him with the offense of public bribery, a crime punishable by the laws of the State of Louisiana with maximum imprisonment of five years and a fine of One Thousand ($1,000) Dollars; said Bills of Information were filed in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, and docketed as *State of Louisiana v. Stanley H. Jackson*, bearing criminal actions numbers 10,255 through 10,271; while said Bills of Information are filed in the name of the District Attorney for said state judicial district, in truth and in fact they were filed and prepared by the Attorney General of the State of Louisiana and all prosecutive steps in connection therewith are under the complete control of said Attorney General of the State of Louisiana, the District Attorney aforesaid having been wholly displaced by said Attorney General.

(2) As to fifteen of said seventeen criminal charges

petitioner is charged with public bribery "by accepting or offering to accept directly and indirectly the sum of One Hundred and Fifty ($150.00) Dollars in United States currency from one T. Frederick Jackson, Inc. and Morgan Power Apparatus Corporation at their offices in Plaquemine, Louisiana, through their employee, Donald Bartnik, with the intent that the conduct of the said Stanley H. Jackson would be influenced with regard to his position and duty as a Louisiana State Police Officer."

(3) Sometime subsequent to the filing of said charges petitioner engaged the services of undersigned counsel to aid, assist and counsel him in connection with said criminal prosecutions and to enter a defense and to do those things reasonably calculated to secure the legal rights of your petitioner.

(4) In an effort to carry out his professional duties and to be of effective assistance to petitioner, your petitioner's undersigned counsel on October 9, 1968, at approximately 4:00 o'clock P.M. appeared at the place of business of the said Donald Bartnik in Baton Rouge, Louisiana, for the purpose of gaining an interview with the said Donald Bartnik with a view to developing the existence of any fact or knowledge which the said Donald Bartnik may possess concerning the criminal charges filed against your petitioner; your petitioner accompanied his said counsel on this occasion.

(5) Petitioner alleges that after having introduced himself and his counsel to the said Donald Bartnik and after having advised the said Donald Bartnik of the purpose of the appearance at his place of business as aforesaid the said Donald Bartnik advised your peti-

tioner and your petitioner's counsel that he had no objection to answering any and all questions that might be put to him concerning any knowledge he may have relative to the criminal charges aforesaid but he first wanted to determine whether or not he, the said Donald Bartnik, had the legal right to discuss the matter of his knowledge concerning these criminal charges;

(6) Petitioner avers that his counsel advised the said Donald Bartnik that he would certainly respect his desire to be informed as to his legal right to discuss the subject matter in question with your petitioner and his counsel and asked the said Donald Bartnik when the said Donald Bartnik desired to be again contacted for the purpose of disclosing to your petitioner and his counsel his decision to discuss the subject matter in question with your petitioner and his counsel; the said Bartnik responded that petitioner's counsel should contact him the following day at approximately the same time of the day of October 9, 1968.

(7) On October 10, 1968, at 3:00 o'clock P.M. your petitioner's undersigned counsel called the said Donald Bartnik by long-distance telephone as requested by him as herein aforesaid to obtain from him a statement of his position to be interviewed by petitioner's counsel; petitioner alleges that on reaching the said Donald Bartnik by telephone the said Donald Bartnik affirmatively stated that he personally had no objection to discussing the matter with your petitioner's counsel but that Kenneth Scullin, while acting in his capacity as Assistant Attorney General of the State of Louisiana, had instructed him not to talk to your petitioner or his counsel concerning any knowledge or information that he might have relative to the criminal charges filed against your

petitioner as herein aforesaid; furthermore the said Donald Bartnik stated that the said Scullin instructed the said Bartnik that should there ever be any interview between the said Bartnik and the said petitioner's counsel all arrangements for such an interview would have to be made through the said Scullin inasmuch as the said Scullin insisted on being present and on monitoring or controlling any such interview; the said Bartnik advised that he would follow the instructions of the said Scullin and consequently would not discuss the question of his knowledge and information relative to the criminal charges filed against your petitioner so long as the said Scullin so instructed him.

(8) Petitioner alleges that his said counsel advised the said Bartnik that he would reduce their conversation to writing, and while protesting the obstructive conduct of the said Scullin, by copy of the proposed letter he would seek to make arrangement for an interview with the said Bartnik and that accordingly on the same date petitioner's undersigned counsel wrote the following letter to the said Bartnik, to-wit:

October 10, 1968

"Registered-Return Receipt Requested

Mr. Don Bartnik
6124 Florida Boulevard
Baton Rouge, Louisiana 70806

Re: State of Louisiana v. Stanley H. Jackson

Dear Mr. Bartnik:

I have just completed my telephone conversation with you which took place at 3:00 P.M., October 10, 1968, when I called you in keeping with your suggestion that I do so during our oral conversation at

your place of business in Baton Rouge which took place at approximately 4:00 o'clock P.M., October 9, 1968. I advised you that I would reduce to writing the content of our telephone conversation and I am doing so at this time.

On October 9, 1968, I appeared at your place of business with Mr. Stanley Jackson and I advised you that I was there for the purpose of discussing with you any knowledge that you may have concerning the criminal charges filed against Mr. Jackson. You advised me that you were willing to discuss the matter with me but before doing so you wanted to determine whether or not you had the legal right to do this. I told you that I certainly respected your desire to be so informed and I asked you when you would be in a position to give me an answer as to your decision. You requested that I call you this date, October 10, 1968, for the purpose of receiving your answer.

In talking to you by telephone on this date, October 10, 1968, you advised me that you had consulted with Mr. Kenneth Scullin of the Attorney General's Office of Louisiana concerning my request to interview you. You advised me during the course of this telephone conversation that you personally had no objection to discussing this matter with me freely and completely. You advised however that you would not do so because Mr. Scullin had instructed you not to talk to me. He instructed you that should I want to talk to you I would have to contact him to make this arrangement and that you presumed that he wanted to be present and thus monitor any interview that I might have with you. You further advised me that you would follow his instructions because you did not know what your legal rights were in respect to such a proposition. I suggested to you that you call or consult with an attorney who had no interest in this prosecution. You advised

however that you did not feel that you should make any financial outlay to determine more definitely what your rights are and that you would rely upon the instructions of Mr. Scullin.

I told you during this conversation that in my opinion Mr. Scullin had no legal authority to so instruct you. Mr. Scullin has no legal control over you and does not function as your retained counsel. The effect of his instruction to you directly impairs the effective assistance of counsel to which Mr. Jackson is entitled. I further informed you that in my opinion his conduct in so obstructing Mr. Jackson in obtaining an interview with you constitutes a violation of Mr. Jackson's civil rights and violates likewise the federal civil rights statutes.

As a means of exhausting every possible avenue of securing a free and unconditional interview with you, I hereby reurge my request to talk to you and interview you privately. While I do not subscribe to the proposition that Mr. Scullin has any authority to instruct you in this matter, by copy of this letter I am transmitting to him this written request to speak to you. I do this so that Mr. Scullin's inentions will be clearly manifested by the course of conduct that he takes in response to this written request. Inasmuch as he has taken upon himself to obstruct the efforts of Mr. Jackson's counsel to effectively defend Mr. Jackson in the manner described in this letter, should he continue in this effort after receipt of this written request, and further condition my interview with you in any manner obstructive of a free and unmonitored interview with you, I serve notice on him and you that I intend to take definitive action in respect to the State action manifested by Mr. Scullin including a report of the matter to the Justice Department.

It is respectfully requested that you respond to this request by return mail. I will meet you any-

where that suits your convenience. I will meet anytime for the interview that suits your convenience. I seek a private interview with you and I seek to develop during that interview nothing but a truthful disclosure of your knowledge, if any, concerning the criminal charges filed against Mr. Jackson by Mr. Scullin and other officers of the Attorney General's Office of Louisiana.

I wish to express to you my gratitude for the courtesy which you displayed when I first interviewed you orally as mentioned in this letter and for having talked to me on the telephone and having expressed your willingness to speak to me and to submit to a private interview subject to Mr. Scullin's approval and prior arrangement.

Cordially yours,

/s/ J. MINOS SIMON

ehs

cc: Mr. Kenneth Scullin

Registered - Return Receipt Requested"

(9) Petitioner alleges that according to the return receipt accompanying said letter said letter was received by an agent of the said Donald Bartnik for the said Bartnik but said letter nevertheless was returned to your petitioner's undersigned counsel; petitioner believes that the said letter was returned by the said Bartnik on the further instruction of the said Kenneth Scullin, then acting as Assistant Attorney General of the State of Louisiana, who had simultaneously received a copy of said letter duly mailed to him.

(10) Petitioner alleges that said Kenneth Scullin,

while acting as a state official, is engaged in a willful effort to suppress facts, to intimidate and instruct a material witness into silence and that he threatens to continue to suppress such material facts and information so as to deprive your petitioner access to all available facts and to the effective assistance of counsel in defense against the criminal charges lodged against him; that the conduct of the said Kenneth Scullin denied petitioner of the federally secured right and privilege to effectively defend himself against and to make adequate preparation for his defense against the criminal charges lodged against him.

(11) Moreover petitioner alleges that on or about September 25, 1968, one Barry Marionneaux at that time, prior thereto, and since then functioning as an agent and/or investigator for said Attorney General, intimidated and threatened one Helen Marionneaux with criminal prosecution if she did not agree to become a witness against your petitioner in connection with the approachig trial of your petitioner then fixed for September 30, 1968; when the said Helen Marionneaux refused to be intimidated into becoming a witness against the said Stanley H. Jackson, the said Attorney General, functioning through another of his assistants, James D. Curley, fulfilled the threat communicated on September 25, 1968, by the said Barry Marionneaux by filing on October 1, 1968, a criminal charge of public bribery against the said Helen Marionneaux, and caused her to be arrested in connection therewith; that said charge of public bribery against the said Helen Marionneaux is identical with the charges against your petitioner in that it relates to the same factual transaction.

(12) Not only have state officials suppressed evidence

material to the criminal prosecutions against him, intimidated witnesses in an effort to have them bear false evidence against your petitioner and denied your petitioner of the effective assistance of counsel and of the right to adequately prepare his defense to the criminal charges filed against him, but your petitioner has otherwise been denied of constitutional due process and equal protection and continues to be so denied of these rights. For example:

(13) On September 13, 1968, during preliminary hearings concerning the criminal charges hereinabove mentioned your petitioner attempted to show in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, that the defendant Attorney General had in fact supplanted the District Attorney of said Judicial District Court and that under the laws of the State of Louisiana said Attorney General was not legally qualified to prosecute your petitioner, under the authority of *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1; the presiding judge, Honorable Daniel Kimball, overruled your petitioner's objection. Your petitioner's counsel reserved a bill of exception to this ruling and requested leave of court to establish the factual basis of his bill of exception in keeping with the provisions of Article 843 of the Code of Criminal Procedure of the State of Louisiana; said state district judge refused to permit your petitioner to do so and thereby denied to your petitioner the right to perfect his bills of exception and thus denied him of the right to an effective appeal inasmuch as the state appellate court can consider only formal bills of exceptions on appeal.

(14) Not only was petitioner denied of the right to perfect his bills of exception as herein aforesaid, but

at that time the state refused to provide him with a transcript of his bills of exception unless he was prepared to pay for this, notwithstanding the unarguable state law that such a transcript must be provided free of charge to him by the State of Louisiana.

(15) Application for remedial writs to the Louisiana Supreme Court was summarily denied for the claimed reason that "The defendant has an adequate remedy by appeal in the event of his conviction." Petitioner alleges, however, that the stated reason for refusing his writ is not well-founded; in the event of his conviction should he appeal the Louisiana Supreme Court in that instance will have nothing before it in respect to the trial court rulings complained of to review; while his conviction under such circumstances would have to be reversed, reversal would necessarily be based upon the failure of the trial judge to permit petitioner to establish his bills of exception and to be supplied with a transcript of these bills of exception; the original trial court rulings thus could never be reviewed in connection with such an appeal; it would be only after a second conviction that the legality of the trial court's rulings could be reviewable by appeal, in he event the state trial judge decided to accord to your petitioner the right to establish and perfect his bills of exception and to be supplied with a transcript of them.

(16) Petitioner alleges furthermore that under the laws of the State of Louisiana in the event of his conviction and sentence to five (5) years as authorized by the public bribery statute of the State of Louisiana, your petitioner could not be released on bail during his appeal, for the reason that the laws of the State of Louisiana prohibit such a release; thus your petitioner will

have to serve two (2) prison terms before the legality of the ruling complained of will become reviewable by the Louisiana Supreme Court.

(17) Again on September 23, 1968, state Judge Kimball similarly denied petitioner of the basic rights to which all citizens of Louisiana are entitled under the laws of the State of Louisiana as herein aforesaid and your petitioner's application for remedial writs to the Louisiana State Supreme Court similarly was denied on September 27, 1968, the State Supreme Court refusing to consider the application, treating it as an application for rehearing as to his previous application for remedial writs herein aforesaid.

(18) On September 26, 1968, petitioner filed a motion for change of venue as to the trial of criminal charge of public bribery bearing docket number 10,270, scheduled for September 30, 1968, alleging grounds therefor cognizable by the laws of the State of Louisiana; this motion was fixed for hearing for September 30, 1968.

(19) Approximately five (5) minutes before court formally opened on September 30, 1968, the State of Louisiana, acting through Kenneth C. Scullin, defendant herein, filed a motion for change of venue as to all of the remaining sixteen (16) criminal charges filed against your petitioner. Said Scullin in his motion stated no legal grounds recognized by the laws of the State of Louisiana; upon the opening of court said state Judge Kimball first entertained the motion for change of venue filed by the State of Louisiana, granted the same without any hearing and similarly granted petitioner's motion for change of venue without hearing any evidence whatsoever contrary to the laws of the State of Louisiana and

ordered the venue changed to Shreveport, Louisiana, some two hundred forty (240) miles from petitioner's domicile and from the site of original jurisdiction or venue.

(20) Shortly after these rulings were rendered your petitioner was informed that the change of venue to Shreveport, Louisiana, had been dictated to the court by the office of Attorney General of the State of Louisiana and that the change of venue to Shreveport resulted from collusion between officials of the Office of the Attorney General of Louisiana and the presiding state Judge Daniel Kimball; petitioner was informed that officials of the Attorney General's Office, including Kenneth Scullin, met with state witnesses on or about September 27, at which meeting it was determined that the criminal prosecutions against your petitioner would be changed to Shreveport, Louisiana, as a means of inflicting as much inconvenience and hardship on your petitioner as possible and as a means furthermore of removing the criminal prosecutions to the domicile of the former chief investigator of the Labor-Management Commission of Inquiry of the State of Louisiana, which agency initiated the criminal prosecutions against your petitioner mentioned herein.

(21) Upon being so informed your petitioner applied to the Eighteenth Judicial District Court to have the order changing the venue recalled and to grant to your petitioner a full hearing on his motion for change of venue, which would include the opportunity to produce evidence as to the climate of the public mind of other available and more convenient venues of the state to which the criminal prosecutions might be assigned in the event the evidence should justify the same, alleg-

ing in that application substantially what heretofore has been recited; said application was denied without any hearing whatever in that the state trial judge simply refuses to order service of the application on the State of Louisiana.

(22) Application to the Louisiana Supreme Court in respect to the refusal to conduct any hearing as to petitioner's application for recall of the order changing the venue and for a hearing on his application for a change of venue was summarily denied by that court on the same claim that petitioner has an adequate remedy by appeal in the event of his conviction; petitioner alleges, however, as heretofore recited, in the event of his conviction and sentence to the authorized five years' imprisonment, he would have to remain in jail until his appeal is heard; furthermore in the meantime he is being subjected to the harassment, ignominy and expense of a public criminal trial before a judicial forum in the State of Louisiana, which, because of the absolute invalidity of the order changing the venue, has no jurisdiction whatever to try your petitioner.

(23) Petitioner alleges that he has no adequate remedy at law to be secure in the exercise of his constitutional liberties; he has exhausted all possible state remedies; unless enjoined and prohibited from doing so, state officials will continue to intimidate witnesses to bear false evidence against him, to instruct and intimidate material witnesses from disclosing to petitioner and his counsel any information that they may have material to his defense, and will continue to be denied of the equal protection of state laws and thus will be subjected to useless prosecution and imprisonment and thus he will continue to suffer deprivations of his liberties as

secured to him by the Constitution of the United States; petitioner alleges that it is imperative that he be permitted to have the effective assistance of counsel, to adequately prepare his defense and not to be obstructed in this effort by the action of state officials in doing the things herein aforesaid or else he will suffer irreparable injury.

WHEREFORE PREMISES CONSIDERED petitioner respectfully prays that upon the filing of this complaint, as may appear fitting and proper to the court:

1. That a temporary restraining order do issue immediately without a hearing, enjoining, restraining and prohibiting defendants Jack P. F. Gremillion, Kenneth Scullin and Barry Marionneaux, their agents, employees, associates or successors in office and those acting in concert with them from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obstruct the due course of justice, and (c) taking any prosecutive steps or otherwise attempt to conduct any trial in re-

spect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and protected by the courts of the State of Louisiana having jurisdiction in such cases.

2. That this cause be advanced on the docket of this court and set for a speedy hearing according to law and on such preliminary hearing, that a preliminary injunction in the nature and substance of the temporary restraining order herein prayed for do issue, enjoining, restraining and prohibiting said defendants, their agents, employees and successors in office to the extent, nature and form of said temporary restraining order herein prayed for.

3. That upon final hearing of this cause on its merits this Honorable Court will enter a permanent injunction that will enjoin and restrain the said defendants, their agents, employees or their successors in office and all persons acting in concert with them forever from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of

his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obstruct the due course of justice; and (c) taking any prosecutive steps or otherwise attempt to conduct any trial in respect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and protected by the courts of the State of Louisiana having jurisdiction in such cases.

PETITIONER FURTHER PRAYS that the right hereafter to sue in damages for the deprivation of his constitutional liberties be fully preserved herein and for all his costs.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Layfayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Petitioner

STATE OF LOUISIANA

PARISH OF LAYFAYETTE

J. MINOS SIMON, being first duly sworn, did depose and say that he is of counsel in the foregoing complaint for injunctive relief; that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

Further affiant states that the facts recited in the foregoing complaint exemplify an abrasive discriminatory pattern of criminal prosecution against members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana, including complainant in the foregoing complaint; such willful state action is reflected in ways in addition to those set forth in the accompanying complaint; punitive damage, including the infliction of punishment through the process of exacting excessive bail has resulted; the following demonstrates such willful state action; despite state law to the contrary (Article 321, Louisiana Code of Criminal Procedure) without the showing of any cause whatever state Judge Daniel Kimball in cooperation with the office of the Attorney General of the State of Louisiana arbitrarily increased the

bail bonds of those charged together with complainant; this increase occurred on September 3, 1968, to-wit:

Name	*Original Bail*	*Bail Increased To*
Jerry Sylvester	$10,000	$28,000
Terry George	$10,000	$28,000
Jerry Kichen	$10,000	$28,000
Edgar Coleman	$10,000	$28,000
Tommy Craig	$10,000	$28,000
Alton Holden	$ 8,000	$20,000
Hugh Marionneaux	$ 8,000	$20,000
Emery C. Hendrick	$ 8,000	$20,000
Lloyd W. Kinchen	$ 8,000	$20,000
Emmett Tucker	$ 8,000	$20,000
Gene C. Fontenot	$ 8,000	$20,000
Billy Dardeau	$ 8,000	$20,000
Byron D. Vidrine	$ 8,000	$20,000

Furthermore affiant states that state Judge Kimball refused to conduct any hearing as to said increase when application was made to reduce the bail bond to its original amount; for example, Jerry Sylvester filed a formal application with the court presided over by state Judge Kimball styled: "Motion to Reinstate Prior Bail Bond; Alternatively to Reduce Current Bail Bond"; said motion was fixed for hearing for September 23, 1968; a written request dated September 19, 1968, for the issuance of compulsory process for the appearance of witnesses on behalf of the said Jerry Sylvester was hand-delivered to the Clerk of the State Court, Mrs. Theresa Delacroix; state Judge Kimball, however, after said request was received, instructed the said Theresa Delacroix not to issue said subpoenas; the action of state Judge Kimball was taken extrajudicially and for no

cause whatever; on the date of the scheduled hearing the said state Judge Kimball admitted to affiant that he had caused the cancellation of these subpoenas but assigned no reason whatever and consequently no hearing was conducted as to Sylvester's motion simply because state Judge Kimball refused to conduct any such hearing and furthermore interposed himself between the accused and his constitutional right to compulsory process of witnesses.

Affiant further states that Roderick Jenkins has been making formal request for a speedy trial since the early part of 1968, and consistently state Judge Kimball and the Eighteenth Judicial District Court as well as Louisiana Supreme Court have refused to accord him a speedy trial; his trial was assigned for October 7, 1968, but on September 23, 1968, said trial was set aside over the vigorous protest of the said Roderick Jenkins; similar action was taken as to the trial of Emmett Tucker and Billy Dardeau; though charged since January of 1968, none of these accused persons has been granted any hearing or a trial in conformity with the requirements of the laws of the State of Louisiana.

/s/ J. MINOS SIMON

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 22nd day of October, 1968, at Lafayette, Louisiana.

(Signature not legible)

Notary Public

ORDER

Considering the foregoing complaint and supporting affiadavit:

IT IS ORDERED that a temporary restraining order do issue immediately without a hearing, enjoining, restraining and prohibiting defendants Jack P. F. Gremillion, Kenneth Scullin and Barry Marionneaux, their agents, employees, associates or successors in office and those acting in concert with them from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obtruct the due course of justice; and (3) taking any prosecutive steps or otherwise attempt to conduct any trial in respect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and

protected by the courts of the State of Louisiana having jurisdiction in such cases.

IT IS FURTHER ORDERED that said defendants do show cause on the .....day of....., 1968, at .....o'clock A.M., why a preliminary injunction in the nature of the temporary restraining order should not issue as prayed for.

OFFICIALLY GRANTED on this ..... day of ....., 1968, at Baton Rouge, Louisiana.

.....

United States District Judge

APPENDIX E-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION
NUMBER 68-177

STANLEY H. JACKSON

VERSUS

JACK P. F. GREMILLION,
KENNETH SCULLIN, AND
BARRY MARIONNEAUX

ORDER OF DISMISSAL

This is another in a series of complaints filed by counsel for petitioner on behalf of various persons charged with violating certain criminal statutes of the State of Louisiana. Counsel once again seeks to have this Court intervene and interfere with the criminal processes of the Courts of the State of Louisiana. In this case, as in all of the prior cases, the complaint sets forth no claim upon which this Court could, or should grant relief. Petitioner's recourse is to the State Court of Louisiana wherein the charges against him are pending. There is adequate remedy available to petitioner through the ordinary and lawful processes of the State Courts of

Louisiana, including their appellate procedures, and it is there that petitioner must look for any relief to which he may be entitled.

Thus, in the opinion of this Court, the lengthy and articulate complaint filed herein, having been prematurely filed, and failing, on its face, to set forth a claim upon which relief can be granted:

IT IS ORDERED that plaintiff's request for a temporary restraining order be, and it is hereby DENIED, and

IT IS FURTHER ORDERED that this case be, and it is hereby DISMISSED on the ground that it has been prematurely filed, and on the further ground that it fails to state a claim upon which relief can be granted by this Court.

Baton Rouge, Louisiana, October 28, 1968.

Original Signed: E. GORDON WEST

United States District Judge

APPENDIX F-1

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors should be singled out for destruction; in furtherance of said

plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kinchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who

would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor-Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

GEORGE WYATT

SWORN TO AND SUBSCRIBED before me on this ..... day of ....., 1968.

Notary Public

APPENDIX F-2

NO.....

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Personally came and appeared before me

FRED S. LEBLANC

Judge of the Nineteenth Judicial District Court

STATE OF LOUISIANA

Vs.

GEORGE O. WYATT

Room 405, Bellemont Motel
7370 Airline Highway
Baton Rouge, Louisiana

Joseph A. Oster, Department of Justice, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

That one GEORGE O. WYATT, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, Louisiana, on or about the second (2nd) day of May, 1968, committed perjury in that he did intentionally make a written statement, knowing same to be false under sanction of an oath, before William C. Bradley, Notary Public, an official authorized to take testimony, as follows:

STATE OF LOUISANA
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors should be singled out for destruction; in furtherance of said plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor-Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster

stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

Within this State and Parish, and the jurisdiction of the Nineteenth Judicial Disrict Court, contrary to the form of the statutes of the State of Louisiana in such case made and provided, and against the peace and dignity of the same.

Wherefore, deponent prays that the said accused be arrested and dealt with according to law.

/s/ JOSEPH A. OSTER

Sworn to and subscribed before me this 30th day of July, 1968.

/s/ FRED S. LEBLANC

Judge Nineteenth Judicial District
Court of Louisiana

WARRANT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

To the Sheriff or any Legal Officer:

WHEREAS, complaint has been made before me, upon oath, of Joseph A. Oster charging, one: George O. Wyatt, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, Louisiana, with Perjury. Now, therefore, you are hereby commanded, in the name of the State, to apprehend and arrest the said accused and bring him before our Court to answer the said complaint. You are further commanded to keep the said accused in safe custody pending a session of the Court, or until released according to law, and this shall be your warrant.

Given under my official signature this 30th day of July, 1968.

Judge Nineteenth Judicial
District Court of Louisiana

APPENDIX F-3

No. 66,593

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

RALPH L. ROY, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that George O. Wyatt late of the Parish of East Baton Rouge, on or about the Second (2nd) day of May in the year of our Lord One Thousand Nine Hundred and Sixty-Eight (1968) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did commit perjury in violation of R.S. 14:123, in that he did intentionally make a written statement, for use in a judicial proceeding on the docket of the Federal District Court, Baton Rouge Division, captioned *Jenkins v. Gov. McKeithen, et al.*, No. 68-38, knowing same to be false under sanction of an oath, before William C. Bradley, Notary Public, an official authorized to take testimony, as follows:

"STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors would be singled out for destruction; in furtherance of said plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J.

D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor-Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges. Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if

> Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor-Management Commission of Inquiry would have fifty-one witnesses to say that he was there."

Said written statement under sanction of oath hereinabove referred to relating to matter material to the issue and question and controversy in the above-mentioned suit No. 68-38 on the docket of the Federal District Court, Baton Rouge Division, that the said Louisiana Labor-Management Commission of Inquiry was unconstitutionally established and is being administered and operated in violation of individuals' civil rights under federal statutes, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

RALPH L. ROY
Assistant District Attorney
19th Judicial District of
Louisiana

CERTIFICATE

I hereby certify that the Petition for Rehearing submitted on behalf of Mr. Patrick G. Martone is presented in good faith and not for delay.

Lafayette, Louisiana

This 6th day of November, 1968.

J. MINOS SIMON
1408 Pinhook Road
P. O. Box 52116, OCS
Lafayette, Louisiana

Attorney for Appellant

PROOF OF SERVICE

I, J. Minos Simon, Attorney for Mr. Patrick G. Martone, Plaintiff-Appellant in the captioned proceedings, and a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of Mr. Martone's application for rehearing filed before this Court has been served on the several parties hereto by mailing the same in a duly stamped envelope with first-class postage prepaid to their attorneys of record, Ashton L. Stewart, Esquire, Special Assistant Attorney General, State of Louisiana, 604 Union Federal Building, Baton Rouge, Louisiana, and Wesley Wirtz, Esquire, Assistant Attorney General, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

Lafayette, Louisiana

This 6th day of November, 1968.

J. Minos Simon
1408 Pinhook Road
P. O. Box 52116, OCS
Lafayette, Louisiana

Attorney for Appellant